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Interstate Commerce Commission
1992 Annual Report



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For sale by the U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-041615-9

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LETTER OF TRANSMITTAL

April 4, 1993

To the Congress of the United States:

It is my pleasure to submit the one hundred and sixth Annual Report of the Interstate Commerce Commission.

The report covers the fiscal year ended September 30, 1992, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the fiscal year appears in Appendix D.

Edward J. Philbin
Chairman

THE COMMISSION

(As of September 30, 1992)

	Appointed	Term Expires Dec. 31
<i>Chairman</i>		
Edward J. Philbin (R) California	1990	1993
<i>Vice Chairman</i>		
Gail Clements McDonald (D) Oklahoma	1990	1994
<i>Commissioners</i>		
J. J. Simmons III (D) Oklahoma	1984	1995
Karen Borlaug Phillips (R) Virginia	1988	1996
Edward M. Emmett (R) Texas	1989	1992

On November 22, 1991, the Senate confirmed the nomination by President Bush of Commissioner Karen Borlaug Phillips to another five-year term. She took her second oath-of-office on December 5, 1991.



The Commissioners: *From the left*, Commissioner Karen Borlaug Phillips, Vice Chairman Gail Clements McDonald, Chairman Edward J. Philbin, Commissioner J. J. Simmons III, and Commissioner Edward M. Emmett.

Functions and Responsibility

The Interstate Commerce Commission (ICC) is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the ICC attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 57,000 for-hire companies providing surface transportation in the U.S. Among these companies are railroads, trucking firms, bus lines, barge operations, one coal slurry pipeline, certain types of chemical pipelines, household goods movers, and freight forwarders of household goods.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC is authorized to have five Commissioners each with a five-year term of office.

How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authority to the Commission's bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental bodies. In addition, the Chairman generally is responsible for:

1. Overall Commission management and operations;
2. Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
3. Identification and resolution of major regulatory problems; and,
4. Development and utilization of effective, expert staff support for the

fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission and assumes the Chairman's duties during the Chairman's absence. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, and discipline of non-attorney Interstate Commerce Commission Practitioners.

During the fiscal year, the Commission's activities were carried out through an organizational structure consisting of the Commission's bureaus and offices, as follows:

Office of Compliance and Consumer Assistance monitors the activities of ICC-regulated companies and rate bureaus to ensure compliance with the law administered by the ICC, and assists the public in the resolution of complaints against ICC-regulated companies.

Office of Congressional and Legislative Affairs develops and maintains cooperative relations with Congress; performs liaison activities with Congress to enhance understanding of Commission actions; responds to Congressional inquiries; and prepares testimony for presentation at Congressional hearings and written comments on proposed legislation for submission to Congress.

Office of Economics conducts economic and statistical analyses of the transportation industries and provides economic advice to the Commission. The Office determines and applies uniform accounting and reporting rules; reviews various financial reports; analyzes cost, economic, engineering, and financial evidence submitted by parties in cases before the Commission; compiles and publishes transportation statistics and cost studies; conducts audits of pertinent records of transportation firms; and ensures that energy

and environmental concerns are adequately assessed.

Office of External Affairs directs the intergovernmental, State and local government, constituent, public, industry, and media affairs for the Commission.

Office of the General Counsel renders legal opinions to the Commission, and defends Commission decisions challenged in court.

Office of Hearings is staffed by Administrative Law Judges that conduct various hearings and render initial decisions as directed by the Commission.

Office of Human Relations manages the Commission's program to provide equal employment opportunity for all employees and applicants, and provides training in the area of human relations.

Office of Inspector General conducts independent internal audits and investigations of the Commission's operations.

Office of the Managing Director manages the Commission's day-to-day operations. This includes budget, personnel, administrative services, and systems development.

Office of Proceedings processes Commission cases pertaining to operating rights, financial matters, mergers,

rates, abandonments, and competitive practices.

Office of Public Assistance (Special Counsel) functions as a clearinghouse for resolution of small-business problems related to surface transportation regulation; advises the Commission on the nature and status of such problems; contributes to the public interest record in Commission cases; and assists individuals, consumer groups, small communities, small shippers, as well as transportation and public utility commission officials participating in those cases.

Office of the Secretary serves as the Commission's documentation center and clerk of the Commission. The Secretary's legal unit prepares procedural decisions and informal opinions. The Office is responsible for record keeping and the issuance of the Commission's decisions and other legal documents. The Office also administers the examination program for non-attorney ICC practitioners and is involved in the acceptance of filings and the assignment of proceedings to the Commission's Bureau and Offices.

Office of Tariffs monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they become effective.

YEAR IN REVIEW

1991

OCTOBER

10 Commission releases 1990 Uniform Railroad Costing System unit costs.

Revenues, earnings, and ridership of Nation's larger bus companies improves during second quarter of 1991.

23 Commission announces settlement in Pueblo International v. Puerto Rico Maritime rate complaint case.

Commission schedules oral hearing in Union Pacific Railroad Company abandonment proposal in Wallace, Idaho.

24 Commission modifies procedures to determine the Rail Cost Adjustment Factor (RCAF) for long-run changes in railroad productivity.

NOVEMBER

4 Commission announces new enforcement policy.

6 Commission adopts 1989 railroad productivity value and eight-year average.

7 Commission announces settlement in Iowa Power v. Burlington Northern Railroad switching charge complaint case.

11 Commission adopts rules to apply new Uniform Railroad Costing System for off-branch cost determinations in abandonment proceedings.

18 Commission establishes a maximum period of 180 days for railroads to reinstate expired railroad transportation contracts.

19 Commission reminds Nation's licensed interstate truck and bus operators of responsibilities under Nation-wide commercial driver's license.

DECEMBER

5 Commission and Federal Maritime Commission issue joint policy statement concerning domestic offshore trade.

Commission determines 1992 revenue-to-variable cost ratio caps for nonferrous recyclable commodities transported by railroad.

18 Commission denies request for reinstatement of short-notice tariff authority in response to recently increased fuel costs.

19 Commission issues guide for new environmental rules.

Nation's larger trucking companies report decline in earnings during third quarter of 1991.

Nation's largest household goods carriers show earnings increase, revenue declines during third quarter of 1991.

Earnings of Nation's largest railroads increase during third quarter of 1991.

1992

JANUARY

3 Commission sets first quarter rail cost adjustment factor; maximum RCAF rate levels decrease 1.6 percent from the previous quarter.

Commission finds Pittsburgh & Conneaut Dock Company to be a rail common carrier and requires Blackstone to obtain authority for the purchase or divest the company.

6 Nation's larger bus companies report increased revenues, earnings during third quarter of 1991.

Commission appeals, seeks stay of adverse *Transcon* court decision, in *ICC v. Transcon Lines et al*, No. 91-5036-IH. (C.D. Cal.)

10 Commission seeks emergency injunctive relief from Ninth Circuit Court in *Transcon* litigation.

18 Appeals Court orders *Transcon* trustee to cease discount-related collection activity pending appeal.

29 Commission releases staff report discussing the effects of economic policy and deregulation on nonfinancial corporations, carriers, the public and utilities.

FEBRUARY

5 Commission finds mileage-based rates of Overland Express cannot form the basis for undercharge claims.

7 Commission orders 14 railroads to pay nearly \$10 million in reparations to U.S. Departments of Energy and Defense in rate complaint case.

14 Commission accepts application of CSX Corporation and American Commercial Line to acquire the Valley Line and Valley Transportation, Inc. and determines that proceeding is a minor transaction.

20 Commission permits United Parcel Service carriers to file annual SEC Form 10-K and quarterly Form 10-Q in place of Commission's forms M and QFR.

26 Commission requests public comment on proposal to change railroad car hire compensation.

Commission reorganizes Office of Compliance and Consumer Assistance.

MARCH

3 Southern California Regional Rail Authority and Atchison, Topeka and Santa Fe Railroad agree to expedited procedural schedule in terminal joint-use dispute.

Commission announces settlement in Exxon/PSI v. Southern Railway rail rate complaint case.

9 Commission proposes expansion of certain commercial zones along U.S.-Mexican border.

18 Commission proposes to eliminate historical retention of international, joint ocean-motor, through-rate tariffs.

19 Nation's largest household goods carriers report increased earnings from carrier operations during fourth quarter 1991.

20 Reorganization of the Office of Proceedings takes effect.

Commission sets second quarter rail cost adjustment factor. Maximum RCAF rate levels decrease 1.5 percent.

24 Commission releases report on trucking deregulation.

Commission denies Regular Common Carrier Conference's petition to in-

stitute a rulemaking proceeding to define minimum rates, to set tariff standards, and to require motor contract carriers to file tariffs.

27 Supreme Court affirms a 1988 ICC decision requiring conveyance of rail line from Boston and Maine Corporation to Amtrak.

30 Commission sets procedural schedule in Tongue River Railroad construction application and announces oral hearing.

Commission, Springfield Terminal Railway, and United Transportation Union agree to continuation of Commission oversight concerning employee-labor protection.

31 Earnings of Nation's larger trucking companies decline during fourth quarter and year 1991.

APRIL

1 Commission issues show cause order and begins investigation of certain trucking companies and individuals concerning assessment and attempted collection of rates in excess of those in tariffs filed with Agency.

7 Commission denies request to establish minimum rate standards for trucking industry.

Commission exempts rail market development activities for industrial projects, such as industrial parks, from the Elkins Act anti-rebating provisions.

Nation's largest railroads report increased earnings during fourth quarter of 1991.

13 Commission announces settlement in SCIO Pottery v. Conrail rail service complaint case.

16 Commission Chairman initiates further review of regulations pertaining to rail carriers.

17 Commission allows Chicago and North Western Transportation Company to discontinue rail service in Nebraska.

23 Commission proposes substantial deregulation of rail car demurrage.

28 Nation's larger bus companies report substantial earnings improvement during fourth quarter and year 1991.

30 Commission makes rail cost of capital determination for 1991.

MAY

4 Commission clarifies April 1 Show Cause order against parties attempting to collect added charges based on repudiation of shipper-coded trucking tariffs and extends period for response.

5 Commission issues written decision on lawfulness of Burlington Northern Railroad's "COT" program.

6 Commission issues policy statement regarding interstate/intrastate motor carrier traffic.

7 Commission issues written decision on issue of intrastate versus interstate trucking in Pittsburgh-Johnstown-Altoona Express case.

8 Commission requests public comment on program to replace "Bingo" cards with a single-state motor carrier insurance registration system.

12 Commission issues declaratory order concerning certain shipments within Texas.

20 Commission issues written decision repealing contract regulations for truck transportation of property.

21 Commission accepts a notice of intent filed by Wisconsin Central Transportation Corporation, parent of Wisconsin Central, Ltd. to continue in control of three carrier subsidiaries in Wisconsin.

28 Commission announces that it will permit shipper participation in PLE show cause proceeding regarding shipper account code claims.

JUNE

1 Commission proposes end to regulation requiring operations records for

private trucking companies providing incidental, for-hire transportation.

Commission proposes rule requiring Commission approval for certain undercharge claims by nonoperating trucking companies.

2 Commission discontinues proposal for conversion to metric system in ICC programs and activities.

9 Commission to end historical retention of international joint ocean-motor through rate tariffs.

11 Commission issues report on continuing decline in rail rates since passage of Staggers Act.

12 Commission orders the cancellation of a "range" tariff filed by a motor common carrier on the basis that the tariff fails to meet applicable rate disclosure requirements.

16 Commission releases report to the President on review of regulations.

Commission proposes to issue interim rules to streamline "Bingo Card" system for motor carrier insurance registration.

17 Commission raises revenue thresholds used in classifying railroads.

18 Appeals Court issues decision in *Transcon* case holding that a trucking company has no retroactive remedy for its own unlawful tariff rates.

19 Commission sets third quarter rail cost adjustment factor. Maximum RCAF levels decrease 1.4 percent.

23 Commission issues updated list of minority and female-owned motor carriers.

Commission proposes a new class exemption for most transactions subject to the statutory consolidation provisions.

24 Nation's larger trucking firms report large revenue, earnings, and traffic volume increases during first quarter of 1992.

25 Commission issues updated booklet on consumer rights and responsibility.

ties in interstate household moves by ICC-regulated moving companies.

Commission issues report on first quarter 1992 earnings of Nation's 15 largest household goods carriers. Operating revenues, new carrier operating income increase over first quarter of 1991; net income decreases.

30 Nation's largest railroads report increased revenues, earnings, and traffic volume during first quarter of 1992.

JULY

3 Commission proposes new procedures for the transfer or operation of lines of bankrupt railroads.

Commission adopts alternative administrative dispute resolution procedures.

6 Commission eliminates the requirement that the United States Postal Service file copies of contracts with the Commission providing for the transportation of mail.

7 Commission proposes to exempt transportation equipment moving by rail from ICC regulation.

14 ICC issues report on first quarter 1992 earnings of Nation's 10 larger bus companies which shows earnings decreases over first quarter 1991.

Commission appeals P'I'E bankruptcy court injunction placed on ICC "show-cause" order.

15 Commission proposes to exempt export corn and export soybeans moving by rail from ICC regulation.

22 Commission announces 1991 rail revenue adequacy findings.

27 Commission requests public comments on proposals to change motor carrier reporting requirements.

Commission issues written decision on truck lease and interchange.

AUGUST

4 District Court stays proceedings in Dillard Department Stores case and refers undercharge issues to the ICC.

5 Commission schedules oral hearings in Montana and Wyoming on Tongue River Railroad construction proposal.

6 Commission announces availability of 1991 rail waybill sample and public use file.

11 Commission issues written decision on revision of regulations for bus transportation of passengers with disabilities.

13 Commission proposes two new rules to exempt rail construction from regulation.

19 Commission proposes to revise licensing application form for motor authority.

20 Commission issues order to show cause why certain carrier range of rate tariffs should not be ordered canceled.

Commission adopts rules eliminating "bingo card" program.

27 Commission proposes elimination of redundant, unnecessary regulations for reporting of rail property valuations.

28 Commission reaches settlement agreement with A&A Trucking Corp. and its trustee in shipper discount code show-cause proceeding.

SEPTEMBER

1 Commission advises shippers of court decision that appears to be complete defense against P'I'E undercharge collection attempts based on invalid tariffs.

2 Commission accepts a notice of intent by Union Pacific Corporation to acquire control of Chicago and North Western Holdings, Corp., including its rail carrier subsidiary, Chicago and North Western Transportation Company.

3 Commission exempts railroads from filing contracts, except for agricultural commodities.

Revenues, earnings, and traffic volume of Nation's largest household goods carriers increase during second quarter of 1992.

Commission issue: final rules requiring its prior review of undercharge claims by nonoperating trucking companies.

8 Commission requests public comments on proposal to exempt rail transportation of some nonferrous recyclables.

Commission issues order to show cause why certain motor common carrier range of discount tariffs should not be ordered canceled.

11 Commission issues written decision in proceeding eliminating "bingo card" program for motor carriers.

14 Commission proposes codification of fee billing and debt collection procedures, including sanctions against debtors.

15 Commission requests public comment on Trailer Bridge request for trucking license as part of U.S.—Puerto Rico truck/sea service.

Commission proposes exemptions for connecting track and other rail construction.

16 Commission issues decision regarding abandonment of Conrail's "Highline" in New York City.

Seventh Circuit reverses and remands proceeding involving transportation of train crews.

18 Commission extends time for public comment on draft environmental impact statement on Tongue River Railroad construction proposal.

Commission extends until October 8 the effective date of regulations requiring prior ICC review of undercharge claims by nonoperating trucking companies.

Commission sets fourth quarter rail cost adjustment factor. Maximum RCAF rate levels increase 1.4 percent. Commission seeks comments on index weights.

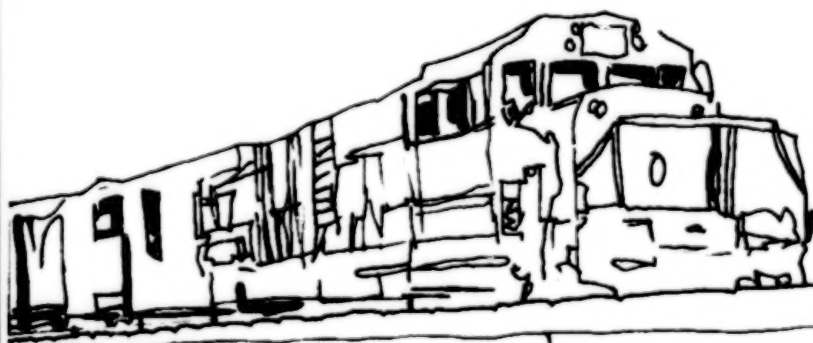
21 Commission approves Union Pacific abandonment of Condon Branch in Oregon.

22 Revenues, earnings, and traffic volume of the Nation's larger trucking companies increases during second quarter and first six months of 1992.

28 Nation's largest railroads report increased earnings during second quarter of 1992.

29 Commission extends comment due date on proposal to exempt export corn and export soybeans moving by rail from ICC regulation.

Commission decides that Best Refrigerated Express trustee cannot collect undercharges in two cases.



ADMINISTRATION

Organization and Management

During fiscal year 1992, the Commission approved two intra-office organizational changes. In January 1992, the Office of Proceedings was reorganized into three new sections. The Legal Analysis Section is responsible for the legal research and analysis of issues arising under the Interstate Commerce Act. The Legal Counsel Section is responsible for identifying and addressing legal issues, drafting decisions for the Commission's approval, and integrating the processing of motor and rail cases by Office of Proceedings staff. The Administrative Section is responsible for the Office's administrative, word-processing, case support, information management, and motor licensing functions.

The Office of Compliance and Consumer Assistance reorganized in January 1992 to combine two separate sections (Operations and Enforcement) into a unified section in order to streamline and consolidate the oversight of field operations, provide opportunities for assignments across disciplines, address sporadic workload fluctuations, and enhance secretarial quality control and coordination.

The Commission's average staff-year employment stood at 614 for the past fiscal year, a decrease of 16 from the prior fiscal year's average of 630.

Human Relations

During fiscal year 1992, the Office of Human Relations continued to carry out its public service mandate in the areas of equal employment opportunity (EEO) and human resource management.

The Human Relations staff provided formal EEO training concerning the agency's prohibition against sexual harassment in the workplace for Commissioners and all managers, supervisors, and employees at headquarters as well as in three field locations. Training regarding "reasonable accommo-

dation" for disabled individuals was presented to headquarters' managers and supervisors. Additionally, the office sponsored awareness programs focusing on the diversity of the work force.

During the fiscal year, the Office submitted the fiscal year 1991 "Analysis of Work Force" report to the Equal Employment Opportunity Commission; the Disabled Veterans Affirmative Action Program Plan for 1992, the Federal Equal Opportunity Recruitment Program Certification, and the fiscal year 1991 Annual Accomplishment Report to the Office of Personnel Management; and submitted the fiscal year 1991 Affirmative Action Accomplishment Report and Update of the Employment of Minorities and Women to the Equal Employment Opportunity Commission.

Office of Public Assistance

The Commission's Office of Public Assistance responded to over 23,500 inquiries regarding matters under the Commission's jurisdiction. The Office provided advice and assistance to numerous parties involved in rail abandonment and rail construction cases and other Commission proceedings, participated in three oral hearings pertaining to railroad proceedings, and participated in a public hearing regarding implementation of labor protective conditions by Guilford Transportation Industries.

The Office revised one booklet on rules and procedures for operating a small railroad, designed and published an extensive information package on motor carrier undercharge claims, updated one motor carrier publication, issued four informational bulletins on motor carrier matters, and updated the Commission's listing of minority and female-owned motor carriers.

Office of Inspector General

The Office of the Inspector General (OIG) completed three audits during the fiscal year, and continued working on a

comprehensive audit of the Commission's procurement and contracting function. Six investigations were completed, one of which resulted in the arrest and conviction of an employee for embezzlement of nearly \$10,000 of application fees. The total monetary impact of OIG investigations in fiscal year 1992 was \$175,000.

The OIG maintains a confidential Hotline at (202) 927-5593. Complaints of fraud, waste, or abuse in Commission programs or operations can be reported through the Hotline or by mail to the OIG. There were 80 Hotline complaints received during the fiscal year.

The Inspector General provided semi-annual reports detailing its activities to the Chairman, Commissioners, and Congressional Oversight Committees.

Commission Budget

The Commission's fiscal year 1994 budget was developed, and submitted concurrently to the Office of Management and Budget and the Congress in September 1992. The budget reflected a decrease in the authorized staffing level of 62 for a total request of 574. This request provides for the performance of the Commission's present statutorily mandated duties with no discretionary current service activities and provides for the continuity of these regulatory functions in the absence of the passage of legislation further deregulating the motor carrier industry. This request reflects the results of Commission review of Offices and their workload for opportunities to maximize resource utilization through reorganization/consolidation or elimination of discretionary functions.

Fiscal Year 1992 Appropriations

Commission funding for fiscal year 1992 was included in the Department of Transportation and Related Agencies Appropriations Act, 1992,¹ approved

October 28, 1991, which authorized the following appropriations:

- **Salaries and Expenses:** For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b), and not to exceed \$1,500 for official reception and representation expenses, \$40,923,000: Provided, That joint board members and cooperating State commissioners may use Government transportation requests when traveling in connection with their official duties as such. Provided further, That not to exceed \$5,500,000 in fees collected in fiscal year 1992 by the Interstate Commerce Commission pursuant to 31 U.S.C. 9701 shall be made available to this appropriation in fiscal year 1992.
- **Directed Rail Service:** None of the funds provided in this Act shall be available for the execution of programs the obligation for which can reasonably be expected to exceed \$475,000 for directed rail service authorized under 49 U.S.C. 11125 or any other Act.

Fiscal Year 1993 Appropriations

On February 19, 1992, Chairman Philbin, Vice Chairman McDonald, and Commissioners Simmons, Phillips, and Emmett appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the Commission's fiscal year 1993 budget request. On March 5, 1992, Chairman Philbin, Vice Chairman McDonald, and Commissioners Simmons, Phillips, and Emmett appeared before the Subcommittee on Transportation of the Senate Committee on Appropriations to testify on the Commission's fiscal year 1993 budget request. On September 28, 1992, House and Senate conferees approved the Commis-

¹ P.L. 102-143

sion's fiscal year 1993 funding in the total amount of \$51,230,000 to fund 636 full time employee staff years.²

**Payments for Directed Rail
Service Appropriation**

The last instance of subsidized directed rail service occurred between October 5, 1979, and March 23, 1980, when the Kansas City Terminal Railway

Company provided service over the lines of the Chicago, Rock Island, and Pacific Railway Company. The Congress last appropriated funds for this directed service in a fiscal year 1982 supplemental appropriation.

Funds for this purpose were neither requested nor appropriated for fiscal year 1993, since no new, subsidized directed rail service is anticipated.

² The Department of Transportation and Related Agencies Appropriations Act, 1993, P.L. 102-388, which authorized the funding was enacted into law October 6, 1992.



LEGISLATION

Regulation of Commercial Motor Carriers

The House Public Works and Transportation Subcommittee on Surface Transportation held a series of hearings (March 24, 31 and April 2, 1992) on issues involving the regulation of commercial motor carriers at which the Commission testified on March 24, 1992. Other witnesses at the hearings included Members of Congress, Federal and State officials, truckers, shippers, brokers, union representatives and creditors in undercharge cases. Chairman Philbin testified on behalf of the Commission, and was accompanied by Vice Chairman McDonald and Commissioners Simmons, Phillips, and Emmett.

The Commission's testimony focused on a broad array of issues, which included the economic status of the motor carrier industry, ICC initiatives relating to the trucking industry, tariff enforcement at the Commission, and illegal lumping practices in the industry. The testimony also included comments supporting legislation which was pending before the Committee. Following is a short summary of each of the legislative efforts addressed by the ICC at the hearing.

Legislation dealing with undercharge claims/ filed rate doctrine. The Commission testified that it continues to believe that the only real solution to the undercharge problem lies in remedial legislation and repeal of the filed rate doctrine. In testimony, three bills (each with a different approach to the problem) were discussed. The Commission endorsed each of them.

The first was H.R. 3705, introduced by Congressman Barney Frank (D-MA) on November 4, 1991. The approach in this bill was to permit the ICC to find a claimed rate unreasonable to the extent that it exceeded comparable rates for like transportation or service. Carriers, and their successors-in-interest, would be prohibited from attempting to col-

lect an undercharge claim until the Commission had determined the reasonableness of the claimed rate. The bill was almost identical to S. 1675, the Senate version of legislation which had been introduced in August, 1991, and which the Commission had supported in testimony in September, 1991. As the House bill did not contain a specific proposal that dealt with claims for less than \$10,000, the Commission recommended inclusion of a provision similar to the one in S. 1675. The recommended provision would have required the ICC to apply a new standard for assessing the reasonableness of tariff rates if the amounts the motor carrier sought to collect from a shipper were less than \$10,000.

The second piece of legislation was H.R. 4406. That bill, introduced by Congressman Ron Packard (R-CA) on March 5, 1992, was largely authored by Commissioners Phillips and Emmett and dealt with broad reforms in both interstate and intrastate levels of regulation of the motor carrier industry. The proposal had been transmitted to Congress in May, 1991, and had been endorsed by a majority of the Commission.

New to the proposal were provisions dealing with the undercharge problem and the Commission generally endorsed the approach taken in the bill. The bill would have provided a settlement mechanism for negotiated rates claims based on an average discount approach. The bill would permit a person, against whom undercharge claims were brought, to use the settlement procedure when two sets of conditions were met.

First, it would be necessary to show that the carrier involved no longer provided interstate transportation subject to ICC jurisdiction. Second, the person defending the undercharge claim would have to show that: the person was offered, and paid, a rate other than the rate on file at the Commission; had tendered

freight in reasonable reliance upon the offered rate; the carrier failed to file the negotiated rate; and the carrier demands for additional payment were based on a higher rate filed in a tariff.

Claims involving shipments of 10,000 pounds or less would be settled by comparing the amount actually paid against an adjusted rate. The latter would be calculated by figuring a percentage (as set forth in the bill) of the lesser of either the legally applicable rate bureau class rate or the otherwise legally applicable tariff rate. If the originally billed and paid freight charges were less than the adjusted rate, the difference, without interest, would be paid to the carrier. If the originally paid rate were equal to or greater than the adjusted rate, no further payment would be due.

For claims involving shipments weighing more than 10,000 pounds, the amount to be paid would be 10 percent of the difference between the carrier's applicable and effective filed tariff rate and the rate originally billed and paid. This settlement procedure would also be available to any shipper who qualified as a small business concern under the Small Business Act, regardless of the weight of the shipment.

The bill also would have affirmed the Commission's authority to determine the reasonableness of the rate claimed by the carrier, and would have relieved the person subject to a claim of any obligation to pay pending the ICC's determination of the reasonableness of the claimed rate.

The final bill addressed in the Commission's testimony on undercharge legislation was H.R. 4392, which had been introduced by request by Chairman Robert Roe (D-NJ) on March 5, 1992. This legislation was developed by Chairman Philbin and had also been endorsed by a majority of the Commission in May, 1991. The legislation, if enacted, would have granted temporary

and possibly permanent relief from future undercharge claims by imposing a one-year moratorium on the filing of tariffs by motor common carriers of property, excluding household goods carriers. It also would have required a report to Congress on whether there was a continued need for the statutory requirement that motor carrier tariffs be filed with and enforced by the Commission. The testimony concluded that this approach would confirm the belief held by the majority of the Commission that the requirement to file motor common carrier rate tariffs at the ICC no longer serves any essential, beneficial purpose. Further, if that finding were to be confirmed, permanent elimination of the tariff filing requirement could then be pursued.

No action was taken on any of the three House bills dealing with undercharges and the filed rate doctrine. The Senate Commerce Committee, however, ordered S. 1675 reported to the Senate as amended in the nature of a substitute on June 16, 1992. The substitute bill took the average discount approach (like that in H.R. 4406) as a means for settling claims. The full Senate passed S. 1675, as amended in the nature of a substitute, on September 30, 1992. The final version as passed by the Senate still provided the shippers the option of obtaining referral of the claims to the ICC on rate reasonableness questions, and contained a less complicated settlement formula based on a straight percentage of the claimed amount. The applicable percentage would be determined by the size of the original shipment. Small businesses have been exempt from undercharge claims, shippers dealing with a claim on a shipment that weighed less than 10,000 pounds could have settled at 20 percent of the claim, and those dealing with truckload claims (greater than 10,000 pounds) could have settled for ten percent of the claim.

The House failed to act on the legislation before final adjournment of the 102nd Congress.

Legislation dealing with intrastate motor carrier operations. At the time of the hearings noted above, several bills that would have reduced or eliminated intrastate economic regulation of interstate motor carriers had been introduced and were pending before the Committee. The Commission testified to its continued support of the concept of reducing intrastate economic regulation of interstate motor carriers and recommended the enactment of legislation that would combine the pending bills. The Commission recognized that the bills overlapped to some degree, but each would have freed different aspects of intrastate transportation from potentially restrictive state economic regulation.

The first of these bills was H.R. 4406, the Transportation Regulatory Reform Act of 1992, introduced by Congressman Ron Packard (R-CA) on March 5, 1992. As noted above, a large portion of this bill was an outgrowth of a Commission-endorsed proposal to bring about needed reforms. In addition to the provisions addressing undercharges, discussed above, the legislation would have required the States to regulate carriers licensed by the ICC in a manner consistent with ICC regulation. The impetus behind the legislation was that many States use outdated regulatory approaches—some dating back to the 1930's—that do not reflect the changes that have occurred in the industry as a result of the Motor Carrier Act of 1980 this has led to major inefficiencies in the industry. This proposal would have required States to seek ICC certification on the standards and procedures they proposed to apply in regulating the intrastate operations of ICC regulated interstate trucking companies.

The Commission also commented on H.R. 4335, the Safe and Competitive Trucking Act of 1992, introduced by

Congressman Dennis Hastert (R-ILL) on February 27, 1992. This bill was an updated version of H.R. 1064, the Safe and Competitive Trucking Act of 1991, which had been introduced in 1991 by Congressman Hastert and supported by the Commission in written comments in May, 1991. The 1992 bill was introduced because language similar to several provisions of H.R. 1064 had been incorporated into the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) and an updated version of the legislation was needed. The legislation would have prohibited States from regulating intrastate rates, routes, or services of interstate motor carriers, private carriers, or brokers which provided intrastate transportation of property. It also would have prevented States from regulating the leasing, rental, and procurement of drivers and motor vehicles by interstate motor carriers of property operating in intrastate commerce. Authority would have been conferred to the Commission, the Secretary of Transportation, and the Attorney General to institute civil actions for injunctive relief to assure compliance with the provisions of H.R. 4335. The Commission testified in support of this approach as it too would produce cost savings by building on the successes brought about by the Motor Carrier Act of 1980.

In addition, the Commission addressed H.R. 4334, a bill introduced by Congressman Pete Geren (D-TX) on February 27, 1992, which would have reformed regulations relating to private carriers. The legislation would have restricted States from imposing economic regulation upon compensated intercorporate transportation, single-source leasing, trip leasing (with or without drivers) from private carriers, separate transportation subsidiaries, and dedicated contract carriage. The approach to deregulation in this bill was less comprehensive than that in H.R.

4406 or H.R. 4335. Nonetheless, the Commission supported the bill because it would preclude State regulation of routes and rates in situations where the Commission does not regulate analogous interstate transportation and would likely improve the efficiency and productivity of the affected carriers.

The next bill addressed in the Commission's comments was H.R. 3221, the Intermodal Carriers Competitiveness Act of 1991, introduced in the House on August 2, 1991, by Congressman Bob Clement (D-TN). This bill would have preempted State laws relating to the regulation of rates for surface transportation of property provided by certain motor and air carriers, specifically small package express companies. The Commission stated that to the extent that State economic regulation of these companies restricted their ability to respond to shipper needs, the existing regulation served no useful purpose and should be abolished as the bill proposed.

No further action was taken on any of these measures in the 102nd Congress.

Legislation dealing with other regulatory reforms. Finally, the Commission's testimony addressed regulatory reforms at the Federal level. A number of sections of H.R. 4406 would have been applied at the Federal level. That proposal sought to streamline the licensing process for entry into the interstate motor carrier industry, eliminate regulation of all rates established independently by carriers outside rate bureau procedures, and would have granted the Commission authority to exempt motor carrier regulation from provisions of the Interstate Commerce Act. These changes would consequently improve efficiency in the transportation system to encourage lower prices for shippers and consumers, and enhance the international competitiveness of U.S. businesses. A majority of the Commission endorsed these changes emphasizing that they

would produce savings for shippers and carriers with no corresponding decrease in highway safety or service to small communities.

No action was taken on this legislation by the end of the 102nd Congress.

Other Legislative Proposals

In fiscal year 1992, the Commission also monitored a number of other legislative proposals dealing with regulation of the surface transportation industry. Some of these, if enacted, would have a direct impact on the Commission while others would have indirectly affected the Commission due to their impact of the transportation industry as a whole.

Rail safety. On June 11, 1991, Congressman Al Swift (D-WA) introduced H.R. 2607, the "Rail Safety Enforcement and Review Act". This bill authorized the activities under the Federal Railroad Safety Act of 1970 through fiscal year 1994 and was passed in the House on September 23, 1991. The Senate passed its version (S. 1571) on March 18, 1992. Final legislation was agreed to on August 12, 1992, and signed into law by President Bush on September 3, 1992 (P.L. 102-365).

Establishment of data base and study of transportation rates. Section 1340 of H.R. 776 (introduced by Congressman Philip Sharp (D-IN) on February 4, 1991), the Comprehensive National Energy Policy Act (P.L. 102-486, signed into law October 24, 1992), of the legislation called for the establishment of a data base and study of transportation rates for rail and pipeline transport of domestic coal, oil, and gas during the period January 1, 1988, through December 31, 1997.

The section directs the Secretary of Energy to determine whether information on the stated rates is reasonably available. If it is not, the Secretary is to establish a data base containing the information on all such rates, while pre-

serving the confidentiality of contract rates. The section directs the Secretary to acquire rail contract rate information from the ICC in aggregate form so as to protect their confidentiality. The section also calls for a study by the Energy Information Administration of the impact of the Clean Air Act of 1990 (P.L. 101-549) on the rates and distribution patterns of domestic coal, oil and gas—provided that no other Federal Agency had already conducted such a study. Finally, the Secretary is directed to report to Congress on the data base and the study and to consult with the Chairmen of the Federal Energy Regulatory Commission and the Interstate Commerce Commission in carrying out the mandate of section 1340.

Federal agency historic preservation programs. On January 3, 1991, Congressman Craig Thomas (R-WY) introduced H.R. 429, the Reclamation Projects Authorization and Adjustment Act, later enacted as P.L. 102-575. The provisions of this comprehensive western water bill did not generally affect the Commission. However, on July 31, 1992, the Senate passed an amendment, section 4012, which would have amended section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f) which deals with the historic preservation consultation process. The draft language would have imposed additional limitations on Federal agencies' licensing authority pursuant to that section.

The ICC is subject to the historic preservation consultation process for its licensing proceedings, including both proposals to abandon rail lines under 49 U.S.C 10903 or 10505, and to acquire rail property through a sale or merger under 49 U.S.C. 10901, 10910, 11343, or 10505. In cases where the Commission and the National Historic Preservation Council disagree on an issue of historic preservation, section 4012, as passed by the Senate, would

have required the ICC to determine that the proposal before it was a "feasible and prudent alternative to the recommendations of the Council" before granting authority. Ultimately the provision was passed and was signed into law (P.L. 102-575) but the section that would have affected the Commission's authority was modified in Conference and the final version of the language did not effectively change existing law.

Transportation and Related Agencies Appropriations Bill for 1993

H.R. 5518, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year ending September 30, 1993, was reported by the House Appropriations Committee on July 1, 1992 (H. Rpt 102-639), passed by the House on July 9, 1992, reported by the Senate Appropriations Committee on July 30, 1992, (S. Rpt 102-351), and passed by the Senate on August 5, 1992. Conference was held on September 9, 1992, and the Conference Report (Report No. 102-924) was passed in both the House and Senate on October 1, 1992. The President signed it into law on October 6, 1992 (P.L. 102-388).

Besides containing the Commission's funding levels for 1993, there were a number of items addressed by both The House and Senate Appropriations Committees addressed in their reports several aspects of Commission policy, but these directives never found their way into the final legislation. Following is a summary of these directives.

Class I railroad criteria. The House report contained language directing the Commission to reverse its June 17, 1992, decision, which raised the definitional threshold for classification as a Class I railroad from \$93 million to \$250 million in annual operating revenues and imposed reporting and accounting regulations only on carriers whose an-

nual revenues exceeded the \$250 million threshold. The report language directed the Commission to collect data, which would duplicate data collected by the Commission prior to its decision. This language would have had the effect of negating the Commission's decision. Ultimately, this language was struck by the Conference Committee.

Electronic tariff filing. The House report directs the ICC to develop a plan on how to more fully implement electronic tariff filing (ETF) at the Commission with a goal of full implementation of ETF in three years. The report calls for the plan to be submitted to Congress at the same time as it is submitted to the Office of Management and Budget. There was no statutory language adopted regarding this issue.

Enforcement of tariff filing standards. The Conference Report adopted without change the Senate report language that directs the ICC to initiate an industrywide proceeding "to eliminate motor tariff filings that fail to explicitly state actual rates applied by carriers or that use so-called range or write-in provisions." The report also instructs the ICC to "require, in the same proceeding, the elimination of secret codes and the restoration of a requirement that tariffs contain appropriate indices to enhance their usefulness." The Committee further instructed that this proceeding be completed within 180 days of enactment and that the Commission report its progress to the Committee.

Exemptions for the transportation of agricultural products.

The Senate report as well as Section 351 of the Senate-passed bill contained language prohibiting the use of any funds in fiscal year 1993 be used in granting exemptions from regulation of transportation by rail of agricultural commodities. The statutory language was objected to in the Administration's veto threat on the bill as it was viewed as being directly contrary to the intent

of the Staggers Act that undue restrictions on changes in prices and service by rail carriers be removed and that the Commission review the impact of exemption proceedings to prevent abuses of rail market power.

The bill language (section 351 of the Senate passed bill) ultimately failed to become law as it was struck in the conference on H.R. 5518. The Senate report language did not change, however, and the Conference Report contains additional language urging the Commission "not to implement rules providing for further exemptions affecting agriculture in fiscal year 1993".

Intercity bus industry. The conferees on H.R. 5518 added language to the Conference Report on competition in the intercity bus industry. The conferees urged the Commission and all intercity bus companies "to work together to assure continued access to affordable bus service." This report language was added in response to certain intermodal goals established in the Intermodal Surface Transportation Efficiency Act of 1991, and in an effort to both promote competition in the bus industry and to express support for continued bus service to rural communities.

Pipeline Safety Improvement Act

On September 15, 1992, the House passed H.R. 1489, its version of pipeline safety legislation. As passed, the House bill contained a section which would exempt certain rail-motor carrier mergers from section 11344(c) of Title 49, U.S. Code, which prohibits the Commission from approving such transactions absent a finding that an individual transaction is in the public interest. Section 508 of the bill exempts from this provision transactions in which an ICC-regulated rail carrier or a person directly or indirectly controlled by or affiliated with the rail carrier seeks to acquire an ICC-regulated motor carrier, if two criteria are met. First, the rail

carrier or person must have acquired a minority stock interest in the motor carrier during the period between November 30, 1987, and May 1, 1992. Second, the rail carrier or person must have been authorized by the Commission, prior to the acquisition, to provide transportation as a motor carrier.

The House passed H.R. 1489, whose provisions were then incorporated into S. 1583 (a similar Senate bill), as a substitute for the original language of that bill. The Senate agreed to S. 1583, as amended by the House on October 5, 1992, with an additional amendment which dealt with construction of the Page Avenue extension in St. Louis, Missouri. On October 5, 1992, the House agreed to the legislation as passed by the Senate. The President signed the measure on October 24, 1992, and it became P.L. 102-508.

Overweight Containers

The Intermodal Safe Container Transportation Act of 1992, a bill to amend title 49, U.S. Code, to provide for verification of weights, and for other purposes was introduced by Congresswoman Helen Bentley (R-MD) on October 22, 1991. The legislation (H.R. 3598) was one of the items discussed at the series of hearings held by the House Public Works and Transportation Subcommittee on Surface Transportation in March and April, 1992, referred to above, as signed into law on October 28, 1992, (P.L. 102-548). The legislation applies only to intermodal shipments and would impose fines and penalties on any shipper that has misstated the weight of a shipment subsequently found to be overweight. The shipper would be required to provide a description of the cargo and a written certification for the gross cargo weight. If the shipment was overweight due to the fact that the carrier had loaded additional cargo, the liability would fall on the carrier.

Administrative Procedure Technical Amendments Act

The House adopted H.R. 2549, the Administrative Procedure Technical Amendments Act of 1991 on November 25, 1991. The Senate adopted it on August 6, 1992 and it was signed by the President on August 26, 1992 (P.L. 102-354).

The legislation redesignates Chapter III of Title 5 (Administrative Conference) as Chapter V, and dedicates Chapters III and IV of Title 5 to the Negotiated Rulemaking Act of 1990 and the Administrative Dispute Resolution Act (ADRA), respectively. The two Acts had been codified as separate Chapter IV's of Title 5. The law also amended the ADRA to give agencies authority to use techniques authorized by it to resolve disputes when the agency itself is not a party to a dispute pending before that agency. The report language indicates that Congress had failed, due to an oversight, to provide authority in the ADRA for an agency to use administrative dispute resolution techniques when a dispute is between parties appearing before it but the agency was not formally a party to the dispute.

ICC Sunset

Two bills introduced in fiscal year 1992 proposed to abolish the Commission. On March 20, 1992, Congressman Joel Hefley (R-CO) introduced H.R. 4535, the Interstate Commerce Commission Sunset Act of 1991. On March 30, 1992, Congressman Norman Mineta (D-CA), by request, introduced H.R. 4703, the Interstate Commerce Commission Sunset Act of 1992. The latter was the Administration's official version of its proposed legislation and would have sunset the agency by October 1, 1992. Congress took no action on either bill.



RAILROADS

Financial Condition

Earnings of the Class I line-haul railroads¹ substantially rose during fiscal year 1992 compared to fiscal year 1991, as the railroads benefitted from increased traffic and improved productivity, particularly from a reduction in the size of train crews pursuant to changes in labor agreements. Operating revenues and revenue ton miles rose during the period by 2.0 percent and 2.8 percent, respectively. Net railway operating income increased about 16 percent to \$2.6 billion and ordinary income rose nearly 17 percent to almost \$2.5 billion. These earnings data exclude large accounting adjustments (special charges) taken by 11 railroads to record major restructuring efforts to eliminate excess capacity, increase labor productivity, and to increase liabilities estimated for settlements of certain claims.

During fiscal year 1992, Class I, line-haul rail employment declined 4.4 percent to a monthly average of about 200,200 employees, compared to a monthly average of about 209,000 employees during fiscal year 1991. Between passage of the Staggers Rail Act of 1980 and fiscal year 1992, rail industry employment levels have decreased about 56 percent.²

Financial Transactions

New carriers. Acquisitions of rail lines by a noncarrier are now normally processed under the Commission's class exemption rules promulgated in

1995.³ The Commission only licenses carriers proposing to provide common carrier service. Accordingly, the Commission dismissed one notice of exemption because the new carrier would provide private service to one shipper only and would not publish tariffs or provide service under contract or enter into joint rates with other carriers.⁴ But the Commission refused to declare another notice void *ab initio* based on allegations that the new carrier did not plan to operate a rail line but to scrap the line.⁵ The Commission found insufficient evidence to revoke the exemption and noted that abandonment authority would be required to salvage the line.

An issue raised by transactions involving the noncarrier corporate affiliates of regulated carriers is whether the noncarrier applicant acquiring the rail line was created solely to evade labor protective conditions. Adversely affected employees of the selling carrier must pursue any claims in the acquisition proceeding and not in an accompanying application for common control by the parent corporation.⁶ Labor protective conditions are only imposed in exceptional circumstances for acquisitions by noncarriers,⁷ while labor protective conditions are mandatory in common control transactions. For example, in New Hampshire and Vermont Railroad Company's (NH&V) acquisition

¹ 49 CFR 1150, Subpart D.

² Finance Docket No. 31916, *The Boeing Company—Acq. and Op. Exemption—Chenalis Western Ry. Co.* (not printed), served October 24, 1991.

³ Finance Docket No. 31870, *Texas and Oklahoma R.R. Co.—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company* (not printed), served April 28, 1992.

⁴ Finance Docket No. 31976, *MidSouth Corporation—Continuance in Control Exemption—MidSouth Rail Corporation, MidLouisiana Rail Corporation, SouthRail Corporation* (not printed), served December 19, 1991.

⁵ See 49 U.S.C. 10901(e).

¹ Railroad companies having adjusted annual operating revenues of \$250 million or more for three consecutive years. Revenues are adjusted annually to eliminate the effects of inflation from the classification process.

² Revenues, earnings and traffic volume data are obtained from the *Quarterly Report of Revenues, Expenses and Income—Railroads and Quarterly Condensed Balance Sheet—Railroads*. Employment figures are from *Form C: Monthly Report of Employees of Class I Railroads*.

of certain lines of the Boston and Maine Corporation (B&M), the Commission rejected claims by rail labor that, because NH&V's startup costs were paid by its corporate parents, and because NH&V would be operated as a single system with carriers controlled by its parent, NH&V was actually the *alter ego* of its parent and should be disregarded for purposes of determining which statutory section properly governs the transaction.⁸ The Commission found that NH&V's operations would be financially independent of its parent and that there were sufficient indicia of independence to warrant accepting the transaction as structured by the applicants.

Another line sale issue that arises with increasing frequency is, when does the sale of rail assets become the sale of a line of railroad, so as to require Commission approval of the sale. This issue was present in four cases decided during the fiscal year. In each of these proceedings, a railroad sought to sell the assets of a rail line, i.e., the right-of-way, track and allied structures, to a noncarrier, typically a State governmental agency, without seeking Commission approval. At the same time, the selling carrier reserved for itself and its successors an easement or contractual right to perform rail service. In two of the cases,⁹ the Commission, following the principles enunciated in a 1991 case,¹⁰ held that the sale was out-

side the Commission's authority. The agency reasoned that since the seller retained for itself or its successors a permanent easement to perform common carrier service over the line, then the buyer acquired no common carrier obligation as a result of the sale. In the third case, the Commission dismissed a notice of exemption in which the State of Maine attempted to substitute a new operator, Maine Coast Railroad Corporation (MCR) for the Main Central Railroad Company (MEC) and its subsidiary, Springfield Terminal Railroad (STR).¹¹ The Commission found that the class exemption procedures could not be used to permit the discontinuance of operations by MEC or STR under the guise of a substitution of operators. In the fourth case, the Commission found a sale of assets to be unlawful and unauthorized because, although the seller reserved a contractual right to provide common carrier service over the line, the terms of the sale accorded enough authority to the buyer to control the acquired line and therefore required Commission authorization. In that case, the Commission granted an exemption on its own motion to permit the sale to go forward.¹²

Intercarrier transactions. For the first time in four years, the Commission approved an intercarrier merger. Consolidated Rail Corporation was authorized to merge with Monongahela Railway Co., which handled coal traffic almost exclusively.¹³ Conrail had previously obtained 100 percent of the Monongahela's capital stock from the Pittsburgh

⁸ Finance Docket No. 31547, *New Hampshire and Vermont Railroad Company—Lease, Operation, and Acquisition Exemption—Boston and Maine Corporation* (not printed), served October 8, 1991.

⁹ Finance Docket No. 31971, *South Orient Railroad Company, Ltd.—Acquisition and Operation Exemption—Line of the Atchison, Topeka and Santa Fe Railway Company* (not printed), served September 2, 1992; and Docket No. AB-43 (Sub-No. 154X), *Illinois Central Railroad Company—Abandonment Exemption—In St. Tammany Parish, LA* (not printed), served July 2, 1992.

¹⁰ Finance Docket No. 31847, *State of Maine, Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad Company* (not printed), served May 24, 1991.

¹¹ Finance Docket No. 32078, *Maine Coast Railroad Corporation—Change of Operators—State of Maine, Maine Central Railroad Company and Springfield Terminal Railway Company* (not printed), served June 19, 1992.

¹² *Southern Pacific Transp. Co.—Abandonment*, 8 I.C.C.2d 495 (1992).

¹³ Finance Docket No. 31875, et al. *Consolidated Rail Corp.—Merger—Monongahela Railway Co.* (not printed), served October 10, 1991.

and Lake Erie Railroad Company (PLE), subject to a neutrality interchange agreement with PLE.¹⁴ Considering the applicability of the neutrality interchange agreement, the Commission found no anticompetitive consequences from this organizational change.

Union Pacific Corporation (UPC) and its rail carrier subsidiaries, Union Pacific Railroad Company (UPRR) and the Missouri Pacific Railroad Company (MPRR) (collectively UP) filed a notice of intent to file an application seeking approval of the acquisition by the latter of control of Chicago and North Western Holdings Corp. (Holdings) and its rail carrier subsidiary, Chicago & North Western Transportation Company (CNWT). UP, through a holding company subsidiary, UP Rail, Inc., currently owns non-voting, convertible preferred stock in Holdings not amounting to a controlling interest.¹⁵ While applicants state that they have no immediate plans to acquire a majority ownership in CNWT, they are requesting authority for the common control of UPRR/MPRR and CNWT short of full integration of the railroads should future market and business considerations warrant. In the notice, the Commission found the proposal to be a "major" transaction and sought comments on a proposed accelerated procedural schedule under which a final decision will be issued one year from the application filing date.¹⁶

In perhaps the most important line acquisition case of the fiscal year, Fox Valley & Western Railroad Company (FV&W), a noncarrier subsidiary of Wis-

consin Central Transportation Corporation (WCTC), parent of Wisconsin Central, Ltd. (WCT) and Sault Ste. Marie Bridge Company (SSMB), filed a notice of exemption to acquire substantially all of the assets of the Fox River Valley Railroad and the Green Bay and Western Railroad and its subsidiary, the Ahnapee & Western Railway Company.¹⁷ Collectively, the acquired assets include approximately 455 miles of rail line in Wisconsin. In related and concurrently-filed proceedings, the Commission accepted for consideration the application of WCTC and its subsidiaries to continue in control of FV&W when the latter became a carrier.¹⁸ The continuance in control proceeding was found to be a "significant" transaction under the Commission's consolidation regulations. After the fiscal year closed, the Commission issued a decision that revoked the class exemption with respect to the acquisition because it was inapplicable, exempted the transaction on the Commission's own motion from the statutory provisions governing acquisition of carriers (49 U.S.C. 11343), and imposed standard conditions for the protection of the public.¹⁹ In the continuance in control proceeding, the Commission approved the transaction, subject to conditions for continued oversight of its implementation.²⁰ WCL

¹⁴ Finance Docket No. 31630, *Consolidated Rail Corporation—Control—Monongahela Railway Company* (not printed), served August 16, 1990.

¹⁵ See *Union Pacific R. R., Et Al.—Trackage Rights Over CNW*, 7 I.C.C.2d 177 (1990).

¹⁶ Finance Docket No. 32133, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company* (not printed), served September 10, 1992.

¹⁷ Finance Docket No. 32035, *Fox Valley & Western Ltd.—Exemption, Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and The Ahnapee & Western Railway Company* (not printed), served May 22, 1992.

¹⁸ Finance Docket No. 32036, *Wisconsin Central Transportation Corporation, et al.—Continuance in Control—Fox Valley & Western Ltd.* (not printed), served May 28, 1992.

¹⁹ *Fox Valley & Western Ltd.—Exemption, Acquisition and Operation—Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation and The Ahnapee & Western Railway Company*, 9 I.C.C.2d 209 (1992).

²⁰ *Wisconsin Central Transportation Corporation, Et. Al.—Continuance in Control—Fox Valley & Western Ltd.*, 9 I.C.C.2d 233 (1992).

was also authorized to acquire trackage rights over the lines of FV&W effective upon consummation of its purchase of these lines.²¹

Trackage rights. For the first time, the Commission granted temporary exemptions for trackage rights, effective for only 90 days.²² The exemptions were granted to allow the parties additional time to negotiate a coordinated use agreement, which will enable the parties to achieve more efficient freight, intercity passenger, and commuter rail operations.

The Commission considered and granted in part²³ a petition by Southern Pacific Transportation Company (SP) to modify certain trackage rights conditions under which The Atchison, Topeka and Santa Fe Railway Company (ATSF) operates over SP's 67.8-mile Tehachapis Line between Kern Junction and Mojave, CA.²⁴ SP proposed to enlarge the tunnels on this line, constructed in 1876, to allow double-stack traffic. The Commission instructed the parties to submit the construction project to an arbitrator for an initial resolution of a dispute and required the parties to submit additional evidence on the terms of compensation.

Modified certificates of public convenience and necessity.²⁵ These certificates are issued to operators of abandoned lines or lines proposed for

abandonment that have been acquired by state or local government entities. Under the modified certificate, an operator may terminate service merely by providing 60 days public notice. The Commission authorized five new operators this fiscal year, compared with nine during the prior fiscal year.

The Feeder Line Development Program.²⁶ This program is designed to prevent downgrading or abandonment of lines. The Commission can force carriers to sell lines they identify for abandonment on their system diagram map or any other line on which existing service is inadequate. The purchaser must pay the constitutional minimum price for the line and guarantee adequate service for at least three years.²⁷ The Commission reaffirmed its modification of its feeder line development rules and discontinued its policy of automatically rejecting feeder line applications when an overlapping abandonment application has already been filed.²⁸

One carrier attempted to defeat a feeder line application by redesignating the line from category 1, indicating possible abandonment within 3 years, to category 5, which indicates no plans for abandonment. Because the carrier redesignated the line after the feeder line application was filed, the Commission refused to recognize the change in designation and instead accepted the application.²⁹ Subsequently, a corporate affiliate of the owning carrier filed a competing feeder line application offering a substantially higher purchase price than the original application. The Com-

²¹ Finance Docket No. 32037, *Wisconsin Central Ltd.—Trackage Rights Exemption—Fox Valley & Western Ltd.* (not printed), served May 14, 1992.

²² Finance Docket No. 32091, *Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board* (not printed), served July 13, 1992, and Finance Docket No. 32094, *Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company* (not printed), served July 13, 1992.

²³ *Atchison, T & SF Ry Co.—Operating Agreement*, 8 I.C.C.2d 297 (1992).

²⁴ The conditions were prescribed by the Commission in *Atchison, T. & S.F. Ry. Co.—Operating Agreement*, 331 I.C.C. 367 (1967), modified, 333 I.C.C. 342 (1968).

²⁵ See 49 CFR 1150, Subpart C.

²⁶ 49 U.S.C. 10910.

²⁷ 49 U.S.C. 10910(a)(1).

²⁸ Ex Parte No. 395 (Sub-No. 2), *Revision of Feeder Railroad Development Rules* (not printed), served February 14, 1992.

²⁹ Finance Docket No. 31701, *Milford-Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch* (not printed), served October 31, 1991.

mission rejected³⁰ the competing application because the new applicant was affiliated with three Class II railroads, including the owning carrier.³¹ Following this rejection, the applicant, the owning carrier, and the carrier leasing the line entered into a non-exclusive trackage rights agreement, and the Commission permitted the application to be withdrawn and dismissed the proceeding.³² Upon appeal, the Commission affirmed the rejection, noting that carrier affiliates, unlike shippers and government agencies, are not among groups that Congress intended to encourage to file feeder line applications.³³ The only other feeder line application filed during the year was also rejected³⁴ for failure to conform with the Commission's evidentiary requirements.³⁵

Class exemptions. The Commission's consolidation regulations³⁶ currently provide class exemptions for seven defined classes of merger, consolidation, and acquisition transactions.³⁷ The class exemption for acqui-

sition or continuance in control of a nonconnecting carrier applies where (1) the railroads involved in the transaction would not connect with each other or any railroads in their corporate family, (2) the transaction is not part of a series of anticipated transactions that would connect the railroads, and (3) the transaction does not involve a Class I carrier. The class exemption for transactions within a corporate family exempts transactions by members of a single corporate family that do not result in adverse changes in service, operations, or competition. The Commission rejected one notice filed under this exemption because the insertion of a new noncarrier holding company would not change the structure of control of its rail carrier subsidiaries and therefore was outside the Commission's jurisdiction.³⁸

The class exemption for acquisitions and renewals of trackage rights exempts trackage rights that are based on written agreements not filed with the Commission, or sought in responsive applications in rail consolidation proceedings. This exemption becomes effective seven days after filing. Accordingly, when a party sought discovery regarding a lease and operation exemption and a trackage rights exemption without filing a petition to reopen the proceedings, its request was denied³⁹ because discovery is only available in active proceedings before the Commission.⁴⁰

³⁰ Finance Docket No. 31701, *Milford-Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch* (not printed), served December 18, 1991.

³¹ See 49 CFR 1151.4(a)(2).

³² Finance Docket No. 31701, *Milford-Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch* (not printed), served July 6, 1992.

³³ Finance Docket No. 31701 (Sub-No. 2), *Hudson River Estates, Inc.—Acquisition of Boston and Maine Corporation Reversionary Interest—Hillsborough Branch* (not printed), served February 27, 1992.

³⁴ Finance Docket No. 31939, *Wisconsin & Michigan Railway Company—Feeder Line Application—Wisconsin Central, LTD.* (not printed), served December 6, 1991.

³⁵ See 49 CFR 1151.3.

³⁶ 49 CFR 1180 et seq.

³⁷ Acquisitions of lines approved for abandonment [49 CFR 1180.2(d)(1)]; acquisition or continuance in control of nonconnecting carriers or lines [49 CFR 1180.2(d)(2)]; transactions within a corporate family [49 CFR 1180.2(d)(3)]; lease renewals [49 CFR 1180.2(d)(4)]; joint relocation projects [49 CFR 1180.2(d)(5)]; reincorporation in a different state [49 CFR 1180.2(d)(6)]; and trackage rights acquisitions and renewals [49 CFR 1180.2(d)(7)].

³⁸ Finance Docket No. 32068, *RailAmerica, Inc.—Corporate Family Transaction Exemption—Huron and Eastern Railway company, Inc., and Saginaw Valley Railway Company, Inc.* (not printed), served June 18, 1992.

³⁹ Finance Docket No. 32012, *Lake State Railway Company—Lease and Operation Exemption—Detroit and Mackinac Railway Company and Finance Docket No. 32018, Lake State Railway Company—Trackage Rights Exemption—Central Michigan Railway Company* (not printed), served June 1, 1992.

⁴⁰ See 49 CFR 1114.21(a).

The Commission proposed to add a new class exemption for any transaction requiring authorization under section 11343 that does not involve: (1) the control or merger of at least two Class I carriers; (2) a reduction in the number of nonaffiliated railroads conducting operations between two points; or (3) the reduction from three to two of the number of carriers serving an interchange point. The proposed exemption would accord expeditious handling to most of the transactions that are now processed either as formal applications or as exemptions under section 10505.⁴¹

Bankruptcy. The Commission proposed new procedures⁴² to process applications for the transfer or operation of lines of bankrupt railroads under plans of reorganization under the Bankruptcy Code.⁴³ The Commission continues to have jurisdiction over a limited class of applications that are subject to court-imposed time constraints. Under the proposal, these applications will be handled under the Commission's procedures for noncarrier acquisitions and operations, and intercarrier transactions, and may be exempted from formal review. The proposed rules would allow the Commission to modify its procedures and deadlines to comply with bankruptcy court directives. The Commission asked for comments on the imposition of labor protective conditions. Comments filed were being analyzed at the close of the fiscal year.

Securities. The issuance of securities and the assumption of liabilities are exempt from the prior approval require-

ments of 49 U.S.C. 11301 under the Commission's class exemption.⁴⁴ Class II and III railroads are relieved of any filing requirement. Class I carriers are required to file a notice of exemption, and the regulations provide for Commission investigation upon the receipt of protests.⁴⁵ Four unopposed notices of exemption were filed. In another action related to securities,⁴⁶ the Commission vacated the reporting requirements it had previously imposed upon Blackstone Capital Partners L.P. in a 1989 proceeding exempting the partnership from the prior approval requirements for the issuance of securities.⁴⁷

Labor Issues

The Commission granted an emergency petition directing an end to a labor union's use of Railway Labor Act (RLA) arbitration procedures to resolve disputes over the implementation of a Commission-approved arbitration award. The Commission asserted jurisdiction and emphasized that the RLA has no role to play in arriving at or interpreting agreements reached under Commission-imposed labor protective conditions.⁴⁸

In two proceedings remanded to the Commission for reexamination in light of a Supreme Court decision,⁴⁹ the agency reaffirmed its authority and that of delegated arbitrators to override provisions of the RLA and collective bar-

⁴⁴ 49 CFR 1175 *et seq.*

⁴⁵ 49 CFR 1175.1(b) and 1175.2.

⁴⁶ Finance Docket No. 31493 (Sub-No. 1), *Notice of Exemption—Issuance of Securities and Assumption of Obligations and Liabilities—Chicago and North Western Transportation Company and Midwestern Railroad Properties, Incorporated* (not printed), served August 27, 1992.

⁴⁷ *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al.*, 5 I.C.C.2d 1015 (1989).

⁴⁸ Finance Docket No. 30965 (Sub-Nos. 1 and 2), *D&H Ry.—Lease & Trackage Rgts. Exempt.—Springfield Term.* (decisions not printed), served December 13, 1991 and March 16, 1992.

⁴⁹ *Norfolk & Western Ry. v. American Train Dispatchers*, 777 U.S. ???, 111 S. Ct. 1156 (1991).

⁴¹ Ex Parte No. 282 (Sub-No. 15), *Railroad Consolidation Procedures: Class Exemption for Transactions Subject to the Statutory Consolidation Provision* (not printed), served July 13, 1992.

⁴² Ex Parte No. 282 (Sub-No. 12), *Transfer or Operation of Lines of Railroad in Reorganization* (not printed), served July 16, 1992.

⁴³ 11 U.S.C. 1172.

gaining agreements established under the RLA to achieve the expected efficiencies of Commission approved transactions. The Commission initially reopened one of the proceedings to consider whether the exercise of its authority to override provisions of a collective bargaining agreement constitutes a taking of property without just compensation in violation of the Fifth Amendment to the Constitution. Subsequently, that issue was withdrawn and the Commission discontinued the proceeding.⁵⁰

In the second case, the Commission reaffirmed its prior determination that the transfer of dispatching functions from union to non-union management employees was directly related to and fulfilled the purposes of a merger transaction specifically authorized by the Commission eight years earlier. The Commission noted that the implementation of operational changes to improve efficiency that may logically arise out of an approved consolidation transaction is consistent with Commission goals, even if those changes were not specifically considered in the original, approved transaction.⁵¹

In a significant decision interpreting the RLA, the Commission found that San Diego Trolley Inc., a California rail passenger carrier, is an "electric railway" and is therefore exempt from RLA provisions.⁵² The trolley carries more than 45,000 passengers daily between San Diego and San Ysidro and between San Diego and El Cajon, California.

The Association of P & C Dock Longshoremens filed a complaint against Blackstone Capital Partners L.P. and Blackstone Transportation Partners L.P. (collectively Blackstone) alleging that Commission approval was required for their purchase of Pittsburgh & Conneaut Dock Company (P & C Dock) and that labor protective conditions were required for the purchase. The Commission found that P & C Dock was a rail common carrier and ordered Blackstone either to obtain Commission authority or to divest P & C Dock.⁵³

The Commission, based on the limited standards for its review of arbitration decisions established in the *Lace Curtain* decision,⁵⁴ declined to review an arbitration award that had denied labor protective benefits to an employee of a carrier acquired in a transaction in which no labor protective conditions had been imposed.⁵⁵ The acquiring carrier was also a party to a control transaction in which labor protective conditions were imposed. The complainant, however, had never been employed by any of the parties to the control proceeding and, accordingly, had no claim to the benefits imposed in that transaction.

In a matter before the Commission on court referral involving the Commission imposed labor protective conditions in *Northern Lines*,⁵⁶ the Commission considered the validity of a separation agreement between the carrier and the employee as well as the extent to which

⁵⁰ Finance Docket No. 30582 (Sub-No. 2), *Norfolk and Western Railway Company, Southern Railway Company and Interstate Railroad Company—Exemption—Contract to Operate and Trackage Rights* (not printed), decisions served May 14, 1992 and July 7, 1992.

⁵¹ *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 8 I.C.C.2d 715 (1992).

⁵² Finance Docket No. 31862, *International Brotherhood of Electrical Workers, Local Union 465—Petition for Declaratory Order—San Diego Trolley, Inc.* (not printed), served August 4, 1992.

⁵³ *Association of P&C Dock Longshoremens v. The Pitts & Conneaut*, 8 I.C.C.2d 280 (1992).

⁵⁴ *Chicago & North Western Tptn. Co.—Abandonment*, 31 I.C.C.2d 729 (1987), *aff'd sub nom. International Bhd. of Elec. Workers v. ICC*, 862 F.2d 330 (D.C. Cir. 1988).

⁵⁵ Finance Docket No. 31063 (Sub-No. 1), *et al., MidSouth Corporation—Control Exemption—MidSouth Rail Corporation and MidLouisiana Rail Corporation* (not printed), served July 17, 1992.

⁵⁶ *Great Northern Pac.—Merger—Great Northern Ry.*, 331 I.C.C. 228 (1967) (*Northern Lines*).

the carrier is obligated to avoid affirmative misrepresentations.⁵⁷ Under the *Northern Lines* conditions, the carrier was obligated to provide employees whose positions had been abolished continued compensation based on an average salary computation.

The agreement in question released the carrier from its obligation to provide continued compensation in exchange for a lump sum payment. At the time the agreement was signed, the affected employee was unaware of a proceeding then pending before the Commission that challenged the method used by the carrier for determining the level of the continued compensation.⁵⁸ The pending proceeding resulted in a substantial upward adjustment to the carrier's average salary computation.

Noting that the employee's claim was not the subject of any arbitration process and that only questions of interpretation had been referred to it by the court, the Commission declined to refer the matters raised to arbitration and addressed the issues presented directly. The Commission found that the release agreement constituted a "resignation" within the express terms of the *Northern Lines* conditions. It concluded that the agreement did not vary the terms of the protective conditions and was therefore valid.

With respect to the carrier's failure to inform the employee of the pending challenge to its interpretation of compensation under *Northern Lines*, the Commission set forth a standard to be applied by the court for determining whether the carrier had breached its duty to the employee. The Commission found the carrier to be under a continuing obligation to deal fairly with its em-

ployees, but concluded that the almost absolute liability standard for affirmative misrepresentation or failure to disclose found in maritime and civil rights cases was not applicable to labor protective conditions imposed upon rail carriers.

In an adverse lease discontinuance proceeding filed by the owner of the line against its current lease operator, the Commission authorized discontinuance of service by the lessee carrier but found no need to impose labor protective conditions.⁵⁹ The discontinuance involved the entire line over which the lessee carrier conducted operations. The Commission could discern no significant benefit from the discontinuance to the operator, its corporate parent, or affiliates, and noted that a new line operator had agreed to hire all of the former operator's employees under current contractual terms.

Finally, pursuant to a court remand, the Commission reopened a rail merger proceeding to provide employees of Southern Pacific Transportation Company an opportunity to demonstrate that they were adversely affected as a class by actions allegedly taken by the corporate parent, in anticipation of the proposed merger, while the stock of the carrier was held in a voting trust arrangement approved by the Commission.⁶⁰ The parties were still pursuing discovery at the close of the fiscal year.

Short Line and Regional Railroads

The Commission's class exemption procedures continued to be the method of choice for the creation and expansion of short line and regional systems.⁶¹ Both new and existing short line and re-

⁵⁷ *Great Northern Pac.—Merger—Great Northern Ry.*, 8 I.C.C.2d 229 (1991).

⁵⁸ Finance Docket No. 21478 (Sub-No. 6), *Great Northern Pac.—Merger—Great Northern Ry.* (not printed), served December 11, 1986.

⁵⁹ *Fore River RR. Corp.—Discon. Exempt.—Norfolk County, MA*, 8 I.C.C.2d 307 (1992).

⁶⁰ Finance Docket No. 30400 (Sub-No. 21), *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company* (not printed), served June 18, 1992.

⁶¹ See 49 CFR 1150.35.

gional carriers are expanding through the common control of previously independent operations, a new trend that expressed itself this fiscal year. Most new short lines created this year involved a common control situation. These carriers are both expanding their operations and becoming more efficient by the acquisition of trackage rights over the lines of contiguous carriers.

The financial success of the Nation's two largest regional rail systems, Wisconsin Central Ltd and Montana Rail Link, Inc., pushed them close to the Commission's revenue threshold level for Class I carriers. Such a change in classification from Class II to Class I would impose substantial new reporting requirements,⁶² subject abandonment proposals to Commission requirements for the carrier to generate statistics for costs, preclude the use of regional averages,⁶³ and also subject the carriers to different statutory standards for some financial transactions,⁶⁴ rate-related matters,⁶⁵ and labor matters.⁶⁶

These two carriers jointly filed a petition to raise the revenue threshold level. Two other Class II regional carriers, Western Rail Properties, Inc., a subsidiary of the Chicago and North Western Transportation Company, and Duluth, Missabe, and Iron Range Railway Company, a subsidiary of Blackstone, Inc., also approached Class I status. The Commission found substantial differences between the Nation's 13 Class I carriers,⁶⁷ with \$28.4 billion in operating revenues in 1990, and the 512 Class II and III carriers, which generated approximately \$3.3 to

\$4.7 billion in operating revenues. Accordingly, the Commission raised the threshold for Class I status from \$50 million (1978 dollars)⁶⁸ to \$250 million (1991 dollars). As a result, Florida East Coast Railroad fell from Class I to Class II status. The Commission also adjusted the revenue threshold level for Class II carriers to a minimum of \$20 million to reflect rebasing. The new classifications became effective on July 20, 1992.⁶⁹

Abandonments

During fiscal year 1992, the Commission authorized the abandonment or discontinuance of service for 1,824 miles of rail line,⁷⁰ which represents a slight decrease from the 1,893 miles granted in fiscal year 1991.⁷¹

Formal applications for abandonment are used for abandonments that must be examined in detail. In reviewing abandonment applications, the Commission considers, among other things, whether the line is a burden on interstate commerce. The Commission balances the abandonment's potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce.⁷² Applying this standard to the Chicago and Northwestern Transportation Company's (CNW) application to abandon the main line running through northern Nebraska, the Commission denied abandonment authority

⁶² See 49 CFR Parts 1241-1248 and Part 1201.

⁶³ See 49 CFR 1152.32.

⁶⁴ For example, see 49 U.S.C. 11344(d).

⁶⁵ For example, see 49 U.S.C. 10705a.

⁶⁶ In, for example, consolidation cases under 49 U.S.C. 11343 *et seq.*

⁶⁷ Florida East Coast Railroad, a Class I carrier, was excluded from this analysis.

⁶⁸ The Commission uses a revenue deflator formula to adjust current operating revenues downward to the 1978 average Railroad Freight Price Index, developed by the Bureau of Labor Statistics.

⁶⁹ *Montana Rail Link, Inc., and Wisconsin Central Ltd.*, 8 I.C.C.2d 625 (1992).

⁷⁰ See Appendix B, Table 8.

⁷¹ Last year's narrative incorrectly reported the number of miles granted as 1,847.

⁷² Docket No. AB-33 (Sub-No. 72), *Union Pacific Railroad Company—Abandonment—In Gilliam County, OR (Condon Branch)* (not printed), served September 21, 1992.

despite CNW's annual operating loss of approximately \$1 million. Instead, the Commission granted discontinuance authority, thereby eliminating CNW's financial burden from operations and preserving the physical plant in order to facilitate the line's potential sale.⁷³

Denying a petition for reopening of a decision granting abandonment of the central segment of a carrier's operating system, the Commission clarified its standards for considering the effect of an abandonment on adjacent line segments.⁷⁴ The Commission must consider allegations that the abandonment of one segment preordains the abandonment of contiguous segments.

Upon a protestant's showing of good cause, the Commission will require applicant to provide financial data for different segments proposed for abandonment and will conduct the public convenience and necessity analysis on each segment and for the line as a whole.⁷⁵ If the parties can demonstrate that a segment of the line can be operated at a profit or that abandonment would result in a significant hardship on a community, abandonment authority will not be authorized for the segment.⁷⁶ The Commission bifurcated one proceeding, granting immediate

abandonment authority for an unused segment, and continued its investigation of the other segment over which a second carrier provided service under a trackage rights agreement.⁷⁷ Although the Commission had denied the trackage rights operator's request to dismiss the application, final abandonment authority for the second segment was denied.⁷⁸ Consideration of different segments of a proposed abandonment is unusual; and absent particular circumstances warranting such action, these requests are denied.⁷⁹

Non-operating common carriers may meet their obligation to provide service through leases with operating carriers. In order to terminate these leases or obtain a new operator, the owning carrier must file an adverse discontinuance application.⁸⁰ One owning carrier sought to obtain an adverse discontinuance by filing a petition for exemption, but the Commission has consistently rejected use of the exemption process to consider adverse abandonments. Accordingly, the petition was treated as a formal application.⁸¹ The application was granted without an investigation and over the protest of the operating carrier because the record demonstrated that the operating carrier

⁷³ Docket No. AB-1 (Sub-No. 230), *Chicago and North Western Transportation Company—Abandonment—Between Norfolk and Chadron, NE* (not printed), served April 17, 1992.

⁷⁴ *Central Michigan Ry. Co.—Abandonment*, 8 I.C.C.2d 166 (1991), and see *Missouri Pac. R. Co.—Aband. Exempt.—Counties in Oklahoma*, 9 I.C.C.2d 18 (1992).

⁷⁵ Docket No. AB-3 (Sub-No. 103), *Missouri Pacific Railroad Company—Abandonment—In Douglas, Champaign and Vermillion Counties, IL* (not printed), served July 31, 1992.

⁷⁶ Docket No. AB-55 (Sub-No. 402), *CSX Transportation, Inc.—Abandonment—Between Woodlawn and Walmar in Jefferson, Washington, Clinton, and St. Clair Counties, IL* (not printed), served September 17, 1992.

⁷⁷ Docket No. AB-117 (Sub-No. 5A), *Elgin, Joliet and Eastern Railway Company—Abandonment—Hammond Branch in Hammond, IN* (not printed), served March 20, 1992.

⁷⁸ Docket No. AB-117 (Sub-No. 5B), *Elgin, Joliet and Eastern Railway Company—Abandonment—Hammond Branch in Hammond, IN* (not printed), served July 22, 1992.

⁷⁹ Docket No. AB-117 (Sub-No. 6), *Elgin, Joliet and Eastern Railway Company—Abandonment—Will County, IL* (not printed), served April 20, 1992.

⁸⁰ Docket No. AB-117 (Sub-No. 5), *Elgin, Joliet and Eastern Railway Company—Abandonment—Hammond Branch in Hammond, IN* (not printed), served November 26, 1991.

⁸¹ Docket No. AB-359, *Fore River Railroad Corporation—Discontinuance of Service Exemption—Norfolk County, MA* (not printed), served February 13, 1992.

had failed to meet its financial obligations and the line's shippers supported the forced discontinuance.⁸²

Abandonment applications that are not opposed within 30 days of filing must be granted within 45 days and allowed to become effective within 75 days under 49 U.S.C. 10904(b). Accordingly, when Rahway Valley Railroad Company's application to abandon its entire track was not protested, the Commission authorized the abandonment within these time frames without an investigation.⁸³ The Commission need not conduct an investigation if the merits of the abandonment can be determined from the carrier's application and any protests. For example, the Commission granted abandonment authority to a carrier without an investigation where the application showed that a rock slide had heavily damaged a line and the carrier would continue service over another route through a trackage rights agreement.⁸⁴ The Commission held in another case that protests that do not challenge the merits of a proposed abandonment do not qualify as opposition to the abandonment and do not merit a formal investigation.⁸⁵

The Commission affirmed its policy of assigning some formal abandonment applications to Administrative Law Judges to hold oral hearings and develop a record while reserving with the

Commission the task of rendering a decision in the first instance.⁸⁶ This procedure allows for the issuance of an administratively final decision that can be directly appealed to a Federal Court.

Southern Pacific Transportation Company (SP) initiated a series of exemption requests to abandon lines that had been sold to the Los Angeles County Transportation Commission (LACTC). The Commission questioned whether the sale should have been subject to prior Commission approval under 49 U.S.C. 10901 and whether LATC, rather than SP, was the proper party to seek abandonment authority. Noting that the procedures set forth in a prior decision⁸⁷ had not been followed, the Commission required the parties to submit additional evidence to determine whether abandonment or merely discontinuance authority should be considered for SP.⁸⁸ The additional evidence showed that SP had entered into a purchase and sale agreement, an interim use agreement, and three shared use agreements (Agreements) with LACTC. SP argued that LACTC had not acquired a line of railroad. SP argued that it retained the line by keeping the common carrier obligation to provide rail service and by maintaining sufficient rights of access to the line to enable SP to provide service. The Commission rejected this argument stating that the Agreements place so many restrictions on SP's right to continue to provide freight service over the subject lines

⁸² *Fore River RR Corp.—Discon. Exempt.—Norfolk County, MA*, 8 I.C.C.2d 307 (1992).⁸³ Docket No. AB-211, *Rahway Valley Railroad Company—Abandonment—Between Aldene and Summit in Union County, NJ* (not printed), served August 27, 1992.

⁸⁴ Docket No. AB-55 (Sub-No. 426), *CSX Transportation, Inc.—Abandonment—In Fayette County, PA, and Monongalia and Preston Counties, WV* (decisions not printed), served July 14 and August 12, 1992.

⁸⁵ Docket No. AB-55 (Sub-No. 405), *CSX Transportation, Inc.—Abandonment—Between Richmond and Marion in Wayne, Randolph, Henry, Delaware, and Grant Counties, IN* (not printed), served April 21, 1992.

⁸⁶ Docket No. AB-1 (Sub-No. 230), *Chicago and North Western Transportation Company—Abandonment—Between Norfolk and Chadron, NE* (not printed), served March 19, 1992.

⁸⁷ Finance Docket No. 31847, *State of Maine, Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad Company* (not printed), served May 24, 1991.

⁸⁸ Docket No. AB-12 (Sub-No. 139X), *Southern Pacific Transportation Company—Abandonment Exemption—Los Angeles County, CA* (not printed), served October 17, 1991.

SP's rights cannot be characterized as unconditional and permanent. The Commission found that prior approval for the sale was required, but that the sale was clearly in the public interest. While not condoning the parties' lack of adherence to Commission procedures, the Commission exempted the sale and granted SP discontinuance authority for the involved lines.⁸⁹ A petition for reconsideration was pending at the end of the fiscal year.

An application seeking authority to abandon Conrail's 30th Street Secondary Track in New York City, filed not by the railroad but rather by a group of adjacent property owners, was granted upon appeal⁹⁰ from an initial decision that would have denied the abandonment. Approval was conditioned on a requirement that the property owners post a surety bond or similar security to ensure payment of any demolition costs exceeding \$7 million. The property owners sought a finding that the public convenience and necessity warranted abandonment in order to remove the Commission's primary jurisdiction, which cleared the way for State and/or local officials to condemn the line. The Commission found no possibility of restoring service and noted that the line had been out of service for at least 10 years. A similar adverse abandonment application was initiated this year against Conrail for a development project near Baltimore's inner harbor.⁹¹

While the Commission no longer has jurisdiction over abandonment requests made by bankrupt railroads,⁹²

the ICC does advise the United States Bankruptcy Court on whether these proposed abandonments are in the public interest.⁹³ Because the Commission's role is advisory, carriers do not need to prefile a system diagram map with the Commission or comply with ordinarily applicable publishing and posting requirements.⁹⁴

Notices of exemption may be used by any carrier that certifies that no local traffic has moved over the line for two or more years and that any overhead traffic can be rerouted.⁹⁵ The Commission clarified that the class exemption may not be used by the underlying property owner to force carriers to abandon lines. Only the party that is obliged to provide common carrier service is eligible to use the class exemption.⁹⁶ The Commission also rejects notices that fail to include the prescribed⁹⁷ environmental and historic reports.⁹⁸

The Commission reopened and allowed Burlington Northern's (BN) notice of exemption to abandon a North Dakota line to become effective.⁹⁹ The notice had been rejected¹⁰⁰ due a restriction limiting that carrier's abandon-

⁸⁹ See e.g., Docket No. AB-365, *Donald R. Cassling, Trustee of Michigan-Wisconsin Transportation Company, Debtor—Abandonment of Cross-Lake Railcar Ferry Between Ludington, MI, and Kewaunee, WI* (not printed), served February 14, 1992.

⁹⁰ See 49 CFR 1152, Subpart E.

⁹¹ 49 CFR 1152.50.

⁹² Docket No. AB-300 (Sub-No. 2X), *Carus Corporation—Abandonment Exemption—In La Salle and Bureau Counties, IL* (not printed), served December 3, 1991.

⁹³ See 49 CFR 11105.7 & .8.

⁹⁴ See e.g., Docket No. AB-367 (Sub-No. 1X), *Georgia Central Railway, L.P.—Abandonment Exemption—In Dodge and Telfair Counties, GA* (not printed), served March 12, 1992.

⁹⁵ Docket No. AB-6 (Sub-No. 318X), *Burlington Northern Railroad Company—Abandonment Exemption—In McKenzie County, ND* (not printed), served January 28, 1992.

⁹⁶ Docket No. AB-6 (Sub-No. 318X), *Burlington Northern Railroad Company—Abandonment Exemption—In McKenzie County, ND* (not printed), served November 9, 1990.

⁸⁹ *Southern Pacific Transp. Co.—Abandonment*, 8 I.C.C.2d 495 (1992).

⁹⁰ *Chelsea Property Owners—Aband.—The Consol. R. Corp.*, 8 I.C.C. 2d 773 (1992).

⁹¹ Docket No. AB-167 (Sub-No. 1102), *David H. Murdock d/b/a/ Murdock Investment Company—Abandonment—Consolidated Rail Corporation Line in Baltimore, MD* (not printed), served August 7, 1992.

⁹² See 11 U.S.C. 1170.

ments in North Dakota to a total of 350 miles.¹⁰¹ The reopening, based on substantially changed circumstances, was prompted by a legislative amendment¹⁰² narrowing the restriction on BN abandonments so that it no longer applies to exemptions for out-of-service rail lines.

Petitions for exemption from formal review of abandonment requests are considered individually and are decided under the standards of 49 U.S.C. 10505. Normally the Commission will grant an exemption upon the evidence submitted in a petition and consider protests on reconsideration. But this year, the Commission denied one petition upon protests. Even though petitioner had been allowed to present additional information, abandonment authority was denied because the line showed a slight operating profit and the abandonment would have had a substantial adverse impact on the line's shippers.¹⁰³

The exemption procedure is often used for little-used lines or, as in the case of CNW's flood-damaged line in northwestern Nebraska,¹⁰⁴ for lines requiring extensive rehabilitation with little or no local traffic,¹⁰⁵ or for lines that

have lost their major shipper.¹⁰⁶ Because the exemption process is tailored to provide speedy regulatory decision-making, requests to delay the process, even those made by the petitioning carrier, are not favored.¹⁰⁷

Allegations that a carrier has deliberately downgraded a line are sometimes made by protestants to a proposed abandonment. The Commission clarified its test of deliberate downgrading, distinguishing between a carrier's active discouragement of existing or potential traffic and its reasonable acts of economy. In applying this test, the Commission examines the nature of the service, the public need for service, the effect of a carrier's actions, the need to economize, and any evidence of specific intent to downgrade for the purpose of turning a profitable operation into a deficit one.¹⁰⁸

Offers of financial assistance either to purchase or subsidize continued operations can be made to prevent any Commission authorized abandonment. An offeror must show that it is financially responsible before the Commission will consider its offer. The Commission will issue a protective order¹⁰⁹ to keep financial statements confidential when warranted.¹¹⁰ If a party is not found to be financially fit, it may submit

¹⁰¹ Section 402 of Pub. L. 97-102 (December 23, 1981).

¹⁰² Section 343 of Pub. L. 102-143 (October 28, 1991).

¹⁰³ Docket No. AB-1 (Sub-No. 229X), *Chicago and North Western Transportation Company—Abandonment Exemption—In Cook County, IL* (not printed), served June 23, 1992.

¹⁰⁴ Docket No. AB-1 (Sub-No. 236X), *Chicago and North Western Transportation Company—Abandonment Exemption—Between Crawford, NE and Crandall, WY* (not printed), served May 19, 1992. In this case, the Commission refused to condition the abandonment by requiring the carrier to provide adjacent property owners with written title opinions for distribution of the right-of-way following abandonment. Issues regarding title to abandoned railroad rights-of-way are not within the Commission's jurisdiction.

¹⁰⁵ See e.g., Docket No. AB-55 (Sub-No. 418X), *CSX Transportation, Inc.—Abandonment Exemption—In Randolph County, WV* (not printed), served September 14, 1992.

¹⁰⁶ Docket No. AB-326X, *Washington Central Railroad Company, Inc.—Abandonment Exemption—In Yakima County, WA* (not printed), served August 24, 1992.

¹⁰⁷ Docket No. AB-363X, *Poseyville & Owensville Railroad—Abandonment Exemption—In Posey and Gibson Counties, IN* (not printed), served September 21, 1992.

¹⁰⁸ Docket No. AB-12 (Sub-No. 137X), *Southern Pacific Transportation Company—Abandonment—and Discontinuance of Trackage Rights Exemption—In San Francisco County, CA* (not printed), served November 12, 1991.

¹⁰⁹ See 49 CFR 1104.14.

¹¹⁰ Docket No. AB-33 (Sub-No. 71X), *Union Pacific Railroad Company—Abandonment Exemption—In Lancaster County, NE* (not printed), served July 1, 1992.

additional evidence on appeal to demonstrate its financial fitness.¹¹¹

Upon request the Commission will set the terms of an offer of financial assistance when the parties cannot reach a voluntary agreement.¹¹² Once the Commission approves the terms for the offer, the carrier must accept the subsidy and continue operations or sell the line. If the line is sold, the abandonment application is dismissed, or the exemption is revoked. This year, a significant number of rail carriers used the financial assistance procedures to purchase other carriers' lines.¹¹³

The Commission must follow strict statutory time frames for receiving and processing offers of financial assistance in formal abandonment applications. By Commission regulation¹¹⁴ these time frames also apply to exempt abandonment proceedings. Under these rules, the Commission denied a request by the State of New Hampshire to require a carrier to keep its physical plant intact for 2 years after its discontinuance of service

to allow a party to make a late offer of financial assistance.¹¹⁵ In exemption proceedings, the Commission will accept late-filed offers that are in the public interest and that are received before the effective date of the exemption.¹¹⁶ When the Commission shortens the normal time for an exemption to become effective, requests may be filed by FAX transmission to meet the deadline.¹¹⁷ Subsequently, a written copy must be filed and served on the carrier.¹¹⁸

No significant changes to the Commission's abandonment procedures were made this year. The Commission did clarify and adopt rules specifying precisely how the new Uniform Railroad Costing System (URCS) is to be used in the calculation of off-branch costs in abandonment proceedings.¹¹⁹ The Commission established explicit deadlines for requesting public use conditions and clarified that its jurisdiction to impose a public use condition expires 180 days from the effective date of the decision authorizing the abandonment.¹²⁰

Public use conditions under 49 U.S.C. 10906 prevent a carrier from disposing of rail property for a statutory maximum time period of 180 days to permit a public agency to negotiate to acquire the real estate under a line per-

¹¹¹ Docket No. AB-3 (Sub-No. 101X), *Missouri Pacific Railroad Company—Abandonment Exemption—In Ellis and Hill Counties, TX* (not printed), served July 2, 1992.

¹¹² See e.g., Docket No. AB-290 (Sub-No. 120), *Chesapeake Western Railway Company—Abandonment—Between Pleasant Valley and Staunton in Rockingham and Augusta Counties, VA* (not printed), served September 17, 1992.

¹¹³ See e.g., Docket No. AB-1 (Sub-No. 237X), *Chicago and North Western Transportation Company—Abandonment Exemption—In Douglas County, NE* (not printed), served April 15, 1992, in which Union Pacific Railroad Company was authorized to purchase the CNW line; Docket No. AB-3 (Sub-No. 94), *Missouri Pacific Railroad Company—Abandonment—In Williamson County, TX (Georgetown Branch)* (not printed), served October 21, 1991, in which the Georgetown Railroad Company was authorized to purchase the MP line; and Docket No. AB-167 (Sub-No. 756N), *Consolidated Rail Corporation—Abandonment—Fourth Street Industrial Track in Fort Wayne, IN* (not printed), served February 14, 1992, in which the Norfolk and Western Railway Company was authorized to purchase the Conrail line.

¹¹⁴ 49 CFR 1152.27.

¹¹⁵ Docket No. AB-32 (Sub-No. 45X), *Boston and Maine Corporation and Northern Railroad—Abandonment and Discontinuance Exemption—In Merrimack and Grafton Counties, NH* (not printed), served November 22, 1991.

¹¹⁶ Docket No. AB-55 (Sub-No. 364X), *CSX Transportation, Inc.—Abandonment Exemption—In Muskegon County, MI* (not printed), served August 14, 1992.

¹¹⁷ Docket No. AB-360 (Sub-No. 1X), *Hartford & Slocomb Railroad Company, Inc.—Abandonment Exemption—In Houston and Geneva Counties, AL* (not printed), served May 27, 1992.

¹¹⁸ 49 CFR 1152.28(a)(2).

¹¹⁹ Use of URCS in the Calculation of Off-Branch Costs, 8 I.C.C.2d 203 (1991).

¹²⁰ *Rail Abandonments—Public Use Conditions—Revision*, 8 I.C.C.2d 392 (1992).

mitted to be abandoned. This year, when the last remaining rail link to Staten Island was approved for abandonment, the City of New York sought a public use condition to all the City and other interested parties an opportunity to negotiate for continued use of the rail property for public purposes. The Commission granted the public use condition and precluded disposal of the right-of-way and of track, track materials and bridges.¹²¹ The Commission will not impose a public use condition to support private efforts to restore rail service.¹²² The condition may be also imposed for a variety of public interest projects such as potential trails.

Notices or Certificates of Interim Trail Use (NITU or CITU) under the National Trail System Act¹²³ were issued to preserve rail rights-of-way for future restoration of rail service and to provide for interim trail use. In issuing them, the Commission is required to ensure that the trail user assumes responsibility for the taxes and liability associated with the proposed trail. The actual development of the trail, however, is the responsibility of the trail proponent. Trails Act conditions can only be imposed on lines that remain subject to the Commission's jurisdiction. The Commission retains jurisdiction until the abandonment is consummated.¹²⁴ Whether an abandonment has been consummated is a question of fact, often based upon examination of the carrier's intent. In determining that intent, the Commission considers both the carrier's statements and actions taken to retire the lines from

service: cessation of operations, cancellation of tariffs, salvage of the track and track materials, and relinquishment of control over the right-of-way.¹²⁵

Not all trails use negotiations are successful. If the negotiations fail, the Commission will revoke an unexpired trails use condition to allow for immediate consummation of the abandonment.¹²⁶ Similarly, an abandonment may be conditioned for trails use negotiations even when an offer of financial assistance is pending; but if the line is subsidized or acquired through a financial assistance offer, the trail use condition is revoked.¹²⁷

Other conditions are imposed on rail line abandonments to mitigate adverse impacts and to conform with the National Environmental Policy Act (NEPA),¹²⁸ the Energy Policy and Conservation Act (EPCA),¹²⁹ the National Historic Preservation Act,¹³⁰ the Endangered Species Act,¹³¹ the Coastal Zone Management Act,¹³² the Clean Water Act,¹³³ Rivers and Harbors Act of 1899,¹³⁴ the Migratory Bird Treaty Act of 1986,¹³⁵ and the National Trails Sys-

¹²¹ Docket No. AB-263 (Sub-No. 3), *Staten Island Railway Corporation—Abandonment* (not printed), served December 5, 1991.

¹²² Docket No. AB-377X, *Buffalo Ridge Railroad, Inc.* (not printed), served September 9, 1992.

¹²³ 16 U.S.C. 1247(d).

¹²⁴ Docket No. AB-6 (Sub-No. 337X), *Burlington Northern Railroad Company—Abandonment Exemption—In Floyd, Hale, and Lubbock Counties, TX* (not printed), served July 7, 1992.

¹²⁵ Docket No. AB-39 (Sub-No. 12), *St. Louis Southwestern Railway Company—Abandonment—In Smith and Cherokee Counties, TX* (not printed), served March 27, 1992.

¹²⁶ Docket No. AB-3 (Sub-No. 63), *Missouri Pacific Railroad Company—Abandonment—In Okmulgee, Okfuskee, Hughes, Pontotoc, Coal, Johnston, Atoka, and Bryan Counties, OK* (not printed), served June 17, 1992.

¹²⁷ Docket No. AB-3 (Sub-No. 99X), *Missouri Pacific Railroad Company—Abandonment Exemption—In Denton County, TX* (not printed), served April 27, 1992.

¹²⁸ 42 U.S.C. 4331-4335.

¹²⁹ 42 U.S.C. 6362(b) and see 49 CFR 1106.

¹³⁰ 16 U.S.C. 470 et seq.

¹³¹ 16 U.S.C. 1531-1542. Also see the implementing regulations of U.S. Fish and Wildlife Service and National Marine Fisheries Service, 50 CFR 402.

¹³² 16 U.S.C. 1451 et seq., and see 15 CFR Part 930.

¹³³ 33 U.S.C. 1344, and see 33 CFR 323.1.

¹³⁴ 33 U.S.C. 403.

¹³⁵ 16 U.S.C. 701 et seq.

tem Act.¹³⁶ While Commission jurisdiction under these acts is limited, the Commission will require mitigation of adverse impacts, such as requiring wetlands that have been damaged to be restored.¹³⁷

Constructions

The highlight of the Commission's activities in the rail construction area came at the end of the fiscal year as the agency proposed two new rules to exempt rail construction from regulation.¹³⁸ The first class exemption would exempt construction of connecting track constructed over existing rail bed or on land owned by the connecting railroads. The second class exemption would exempt all rail construction not covered by the connecting track class exemption. Both exemptions would provide an expedited procedure for consideration of rail construction projects facilitating investment initiatives and expanded rail service. The Commission also noted that the proposed exemptions might be useful in connection with the construction of conventional rail passenger lines and new high speed rail passenger lines, involving either magnetic levitation or other new technologies.

Gateway Western Railway Company (GWRC) proposed to construct about 3,550 feet of connecting track near East St. Louis, IL, that included a crossover of a line of the Terminal Railroad Association (TRRA) of St. Louis under the existing class exemption for

joint relocation projects.¹³⁹ TRRA objected to the crossover arguing that the class exemption does not confer automatic crossover authority as a certificate of public convenience and necessity would.¹⁴⁰ Upon court referral, the Commission held that the class exemption does not exempt a carrier from the need to obtain Commission authority to cross the tracks of another railroad. In this instance, GWRC must seek Commission authority to construct its proposed crossover. The Commission noted that an exemption relieves a carrier of a statutory obligation and cannot be used to force an unwilling carrier to do something it is not obligated to do.¹⁴¹

The Commission set for hearing an application filed by Tongue River Railroad Company to construct a 40.3-mile rail line between a point in Rosebud County, MT, near Ashland, MT, and a point in southeastern Montana, near Decker. Hearings were held in Montana and Wyoming in August 1992.¹⁴²

The Commission concluded the environmental review of the Jackson County Port Authority's proposed construction of a 2.5-mile rail line to connect a new port facility at Greenwood Island, MS, with an existing CSX Transportation, Inc., line at Pascagoula, MS. The Commission imposed 19 specified mitigation measures, many of which were required to protect wetlands, and permitted the construction exemption to become effective.¹⁴³

¹³⁶ 16 U.S.C. 1247, section 8(d), and see 49 CFR 1152.29.

¹³⁷ Docket No. AB-55 (Sub-No. 395X), *CSX Transportation, Inc.—Abandonment Exemption—In Floyd County, KY* (not printed), served October 11, 1991.

¹³⁸ Ex Parte No. 392 (Sub-No. 2), *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901* (not printed), embracing Ex Parte No. 392 (Sub-No. 3), *Class Exemption for Rail Construction Under 49 U.S.C. 10901* (not printed), served September 15, 1992.

¹³⁹ 49 CFR 1180.2 (d) (5).

¹⁴⁰ 49 U.S.C. 10901(d).

¹⁴¹ Finance Docket No. 31923, *Gateway Western Railway Company and CSX Transportation, Inc.—Joint Relocation Project Exemption* (not printed), served September 16, 1992.

¹⁴² Finance Docket No. 30186 (Sub-No. 2), *Tongue River Railroad Co.—Rail Construction and Operation—Ashland to Decker, Montana* (not printed), served March 30, 1992.

¹⁴³ Finance Docket No. 31536, *Jackson County Port Authority—Construction Exemption—Pascagoula, MS* (not printed), served October 7, 1991.

The Commission exempted the proposed construction, by Aroostook Valley Railroad Company, of a 1.5-mile rail line extending from an existing Bangor and Aroostook Valley Railroad line that runs west from Presque Isle, ME, to the Skyway Industrial Park. The exemption became effective upon completion of the environmental review of the project, subject to certain mitigation measures, which also determined the route the line would take.¹⁴⁴

Five additional exemption requests for rail construction projects were granted conditionally, subject in each instance to further consideration of anticipated environmental impacts. Sibley Railway Company was authorized to construct a 4.5-mile rail line to connect a coal-fired electric generating facility near Buckner, MO, with a Union Pacific Railroad Company main line.¹⁴⁵ Southern Electric Railroad Company was authorized to construct a 1.5-mile rail line to connect a coal-fired electric generating facility located about 20 miles northwest of Birmingham, AL, with a Burlington Northern Railroad Company main line.¹⁴⁶ The Elk River Railroad, Inc. (Elk River) was authorized to construct a 30-mile line of railroad between Hartland, WV, and Falling Rock, WV, to connect Elk River's existing 62-mile line with a Consolidated Rail Corporation line.¹⁴⁷ PSI Railroad, Inc., was authorized to construct a 13-mile rail line be-

tween a coal-fired electric generating facility on the Wabash River near Princeton, IN, and the CSX Transportation, Inc., main line in Gibson County, IN.¹⁴⁸ Sioux & Western Railroad Company was authorized to construct a 2-mile rail line between the Sioux Plant, a coal-fired electric generating plant located on the Mississippi River, at Machens, MO, and a Union Pacific Railroad Company line.¹⁴⁹

Rates and Practices

Since enactment of the Staggers Rail Act of 1980, the average, inflation adjusted gross revenue per ton of freight has fallen 23.8 percent.¹⁵⁰ Rail transportation rates for lumber and wood experienced the largest decrease.

Maximum rate reasonableness litigation before the Commission also continues to decline. The established standards for coal rate reasonableness¹⁵¹ have facilitated settlements, and two proceedings were dismissed after the parties resolved their differences.¹⁵² A long-running dispute involving transportation of pulpwood and wood chips ended when the complainant requested dismissal.¹⁵³

The Commission made a final calculation of reparations due on unrea-

¹⁴⁴ Finance Docket No. 32030, *Aroostook Valley Railroad Company—Construction Exemption—Aroostook County, ME* (decisions not printed), served April 28, 1992 and July 24, 1992.

¹⁴⁵ Finance Docket No. 31927, *Sibley Railway Company—Construction Exemption—Jackson County, MO* (not printed), served February 24, 1992.

¹⁴⁶ Finance Docket No. 31972, *Southern Electric Railroad Company—Construction Exemption—Jefferson County, AL* (not printed), served March 17, 1992.

¹⁴⁷ Finance Docket No. 31989, *The Elk River Railroad, Inc.—Construction and Operation Exemption—Clay and Kanawha Counties, WV* (not printed), served May 28, 1992.

¹⁴⁸ Finance Docket No. 32010, *PSI Railroad, Inc.—Construction Exemption—Gibson County, IN* (not printed), served February 24, 1992.

¹⁴⁹ Finance Docket No. 32016, *Sioux & Western Railroad Company—Construction Exemption—Charles County, MO* (not printed), served March 25, 1992.

¹⁵⁰ Interstate Commerce Commission Report, "Rail Rates Continue Multi-Year Decline" (not printed), served June 11, 1992.

¹⁵¹ *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985).

¹⁵² No. 37063 et al., *Increased Rates On Coal, L&N RR*, October 31, 1978 (not printed), served December 26, 1991; and No. 40224, *Iowa Power, Inc. v. Burlington Northern Railroad Company* (not printed), served November 1, 1991.

¹⁵³ No. 37626, *Consolidated Papers, Inc. et al. v. Chicago And North Western Transportation Co., et al.* (not printed), served March 25, 1992.

sonably high rates for spent nuclear fuel and related commodities, resolving issues of principal and interest due and finding all carriers participating in a movement jointly and severally liable.¹⁵⁴ The agency reaffirmed its finding that interest would not be compounded and would be computed at a fixed rate based on market interest rates prevailing on the date of the first overcharge payment, rather than at a variable rate based on interest rates prevailing during each individual overcharge payment.¹⁵⁵

The Commission is studying whether to modify its method of computing interest due on reparations in maximum rate reasonableness cases.¹⁵⁶ The agency proposed: (1) to adopt quarterly compounding of interest, (2) to base interest on rates other than the 90-day (3-month) Treasury bill rate (except where prescribed by statute), and (3) to use floating rates reflecting the actual interest rates prevailing during the period of the overcharges.

The Commission determined that reparations for movements of export grain from Montana for the years 1981-86 and interest through July 1, 1991, amounted to \$16,559,012, but that rates would not be prescribed for the future because the export grain market is now competitive and revenue/variable cost ratios for the traffic are below the statutory standard.¹⁵⁷

The Commission sought comments on whether to exempt from regulation the rail transportation of corn

and soybeans moving for export¹⁵⁸ and the rail transportation of transportation equipment including motor vehicles and parts.¹⁵⁹

The Commission denied a petition to revoke a rate exemption for various agricultural commodities that had been granted to railroads, including The Atchison, Topeka and Santa Fe Railway Company and Consolidated Rail Corporation whose services petitioner sought to subject to renewed regulation.¹⁶⁰ The agency found that the carriers were not abusing any market power over the traffic at issue.

The Commission concluded an investigation of an increased switching charge.¹⁶¹ The ICC undertook the inquiry at the request of a small brick maker located in Laurel, Mississippi. The Commission found that the carrier was not market dominant because (1) competitive motor carrier transportation was available, and (2) the switching charge, even as increased, resulted in a revenue/variable cost (R/V/C) ratio below the jurisdictional threshold, i.e., the revenue produced by the charge did not exceed the variable cost of performing the switching by more than 80 percent.¹⁶² This case constitutes one of the few instances in which the ICC has investigated an increased rail rate since 1980.

In an interlocutory decision, the Commission upheld an Administrative Law Judge's decision that the total cost of unit-train coal service must be con-

¹⁵⁴ No. 37076, *United States Department of Energy, et al. v. The Baltimore and Ohio Railroad Company, et al.* (decisions not printed), served February 7, 1992 and July 28, 1992.

¹⁵⁵ *Id.*, decision served July 28, 1992.

¹⁵⁶ Ex Parte No. 507, *Procedures To Calculate Interest Rates* (not printed), served August 6, 1992.

¹⁵⁷ No. 37809 et al., *McCarty Farms, Inc. et al. v. Burlington Northern, Inc.* (not printed), served November 26, 1991.

¹⁵⁸ Ex Parte No. 346 (Sub-No. 28), *Rail General Exemption Authority: Export Corn And Export Soybeans* (not printed), served July 15, 1992.

¹⁵⁹ Ex Parte No. 346 (Sub-No. 27), *Rail General Exemption Authority—Transportation Equipment* (decisions not printed), served July 9, 1992 and August 20, 1992.

¹⁶⁰ *Rail Exemption—Misc. Agricultural Commodities*, 8 I.C.C.2d 674 (1992).

¹⁶¹ No. 40423, *Southrail Corporation—Increased Switching Charge at Laurel, Mississippi* (not printed), served October 16, 1991.

¹⁶² See 49 U.S.C. 10709(d)(2).

sidered in evaluating the reasonableness of the rate.¹⁶³ The tariff at issue established two component charges for the service, a per-car charge and a flat, annual charge designed to recover fixed costs. The Commission rejected complainants' attempt to focus the complaint on the revenues and costs attributed only to the per-car service.

The Commission's jurisdictional threshold to determine maximum reasonable rates is determined by carriers' cost recovery percentage. The Commission determined that the cost recovery percentage continues to exceed 180 percent of revenue to variable cost of transportation.¹⁶⁴ Therefore, the jurisdictional threshold remained at 180 percent. This was the first time that the Commission used its new Uniform Railroad Costing System, instead of Rail Form A, to determine the carriers' costs.

Each year, the Commission determines a maximum R/V rate ceiling for the transportation of nonferrous recyclables to ensure that the applicable rates recover no more than the average profits that would have to be earned on all commodities in order to cover total expenses and capital costs. The Commission adopted final rules governing annual compliance procedures to set maximum lawful rail rates for nonferrous recyclable commodities.¹⁶⁵ In the prior fiscal year, the Commission set the national R/V ceiling for 1991 at 142.3 percent and adopted regional and indi-

vidual carrier R/V ratios as well.¹⁶⁶ In fiscal year 1992, the Commission proposed a national R/V ceiling of 141 percent and adopted regional and individual carrier ratios.¹⁶⁷ Subsequently, the Commission determined that the railroads were complying with these ceilings on the basis of broad commodity classifications and required carriers to prejustify any rate increases for 1992 for specified movements.¹⁶⁸

The Commission sought comments on whether the rail transportation of nonferrous recyclable commodities should be exempted from regulation when they recover revenue that is less than the variable costs of providing service.¹⁶⁹

In an initial decision,¹⁷⁰ an Administrative Law Judge determined that spent nuclear fuel and related commodities moving between naval ports and processing sites for purposes of recovery are recyclable. He found the rates unreasonable to the extent they exceeded the applicable revenue-to-variable-cost rate cap and ordered reparations and the establishment of lawful rates for the future. The case has been appealed to the Commission.

The Commission awarded reparations on shipments of automobile shredder residue¹⁷¹ and ordered defen-

¹⁶³ No. 40581, *Georgia Power Company, Southern Company Services, Inc., Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton v. Southern Railway Company and Norfolk Southern Corporation* (not printed), served March 18, 1992.

¹⁶⁴ The exact figure varies with the waybill sample used, but all calculations exceeded 200 percent. See Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served May 6, 1992.

¹⁶⁵ *Cost Ratios for Recyclable—Compliance Procedures*, 8 I.C.C.2d 182 (1991).

¹⁶⁶ Ex Parte No. 394 (Sub-No. 8), *Cost Ratios for Recyclable—1991 Determination* (not printed), served November 18, 1991.

¹⁶⁷ Ex Parte No. 394 (Sub-No. 9), *Cost Ratio for Recyclable—1992 Determination* (corrected decision not printed), served December 6, 1991.

¹⁶⁸ Ex Parte No. 394 (Sub-No. 9), *Cost Ratio for Recyclable—1992 Determination* (not printed), served May 6, 1992.

¹⁶⁹ Ex Parte No. 394 (Sub-No. 10), *Railroad Rates on Recyclable—Exemptions* (not printed), served September 8, 1992.

¹⁷⁰ No. 38302S, et al., *United States Department of Energy and The United States Department of Defense v. Baltimore & Ohio Railroad Company et al.* (not printed), served February 12, 1992.

¹⁷¹ Automobile shredder residue, a nonferrous recyclable, is the metallic residue (copper, aluminum, zinc, lead, etc.) left after the iron and steel have been extracted from a shredded vehicle.

dant carriers to establish lawful rates for the future.¹⁷² Unlike rates for most recyclable commodities, rates on automobile shredder residue (except for those charged by Conrail) had never been brought into aggregate compliance. In making its award, the Commission determined that variable cost calculations may incorporate a make-whole adjustment¹⁷³ but rejected application of a productivity adjustment until rules are established that will provide for accurate estimates of this factor. The Commission also refused to offset reparations with revenue shortfalls from below-the-cap rates.

The Commission instituted an investigation of a tariff proposal that would have increased local and proportional mileage rates in connection with joint-line movements of automobile shredder residue but discontinued the proceeding when the tariff was canceled.¹⁷⁴

Upon court remand, the Commission reopened a proceeding that awarded reparations for movements of non-ferrous scrap metal.¹⁷⁵ The court had found that the Commission's prior decision did not properly carry out territorial averaging. Accordingly, the Commission asked the parties and other interested individuals to comment on procedures for reconstructing ag-

gregate compliance for the involved complaint period and for current compliance and also on the method for computing reparations.

Railroads assess demurrage charges against shippers or receivers for detaining rail cars beyond the free-time period prescribed by the applicable tariff. The Commission sought comments on proposals to lessen agency regulation of demurrage charges.¹⁷⁶

A final rule was adopted authorizing carriers to negotiate and enter into bilateral car hire agreements.¹⁷⁷ The agency also proposed new rules that would deprescribe car hire rates for existing or fixed rate cars over a 10-year period and immediately deprescribe car hire rates for new or market rate cars.¹⁷⁸ The Commission also discontinued an ongoing investigation¹⁷⁹ of the car hire rate formula.

The Commission rejected a shipper's argument that carriers have the burden of proving the reasonableness of demurrage charges as an aspect of car service and stated that as in any complaint case, the burden is on the complainant to prove that an existing rate is unreasonable.¹⁸⁰

Burlington Northern Railroad Company's Certificate of Transportation (COT) Program, under which the carrier sells guaranteed future access to cars to shippers of grain, corn, and soybeans at prices set through a public bidding

¹⁷² No. 40385, *Huron Valley Steel Corporation v. CSX Transportation, Inc., et al.* (not printed), served January 14, 1992.

¹⁷³ Costs estimated by formulas sometimes do not reflect differing operational efficiencies. The make-whole adjustment adjusts carrier costs determined by formula to account for the fact that some efficiently handled traffic (e.g., unit trains) has below-average costs while other traffic has above-average costs.

¹⁷⁴ No. 40744, *Increased Rates on Automobile Shredder Residue, Conrail* (decisions not printed), served February 14, and March 2, 1992.

¹⁷⁵ No. 39886 et al., *Huron Valley Steel Company v. Seaboard System Railroad, Inc. et al.* (not printed), served September 25, 1990, remanded *CSX Transp., Inc. v. I.C.C.*, 952 F.2d 500 (D.C. Cir. 1992), reopened (decision not printed), served May 7, 1992.

¹⁷⁶ Ex Parte No. 462, *Exemption Of Demurrage From Regulation* (not printed), served April 21, 1992.

¹⁷⁷ *Railroad Car Hire Compensation—Rule-making*, 8 I.C.C.2d 222 (1991).

¹⁷⁸ Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulations*, Ex Parte No. 334 (Sub-No. 8), *Joint Petition For Rulemaking on Railroad Car Hire Compensation*, and Ex Parte No. 334 Sub-No. 8A) *Joint Petition For Exemption of Arbitration Rule From Application of 49 U.S.C. 10706* (not printed), served February 26, 1992.

¹⁷⁹ Ex Parte No. 334 (Sub-No. 6), *Review of Car Hire Regulation*.

¹⁸⁰ No. 40663 et al., *Ametek, Inc.—Petition For Declaratory Order* (not printed), served April 2, 1992.

process, was approved.¹⁸¹ The Commission rejected contentions that the program constituted an unreasonable practice and that the premium charges established by the program were not allowed under car utilization incentives.

The Commission discontinued authorization of the use of joint-agency master tariffs to update basic line-haul tariffs.¹⁸² The railroads and rail publishing agents successfully completed a Commission-mandated¹⁸³ three-year plan to eliminate the need to use cross referencing of tariffs and supplements to determine a final rate. Now tariff users can determine the final rate by using a single rate tariff.¹⁸⁴

In a complaint alleging that certain rail carriers collected freight charges exceeding the applicable tariff rates for moving liquid synthetic plastics from Moredosia, Illinois, to Los Angeles, California, the Commission reopened an initial decision by an Administrative Law Judge finding that a lower combination rate applied over complainant's alternative constructed route. The Commission then allowed complainant to submit additional evidence to show whether the route was commercially useful.¹⁸⁵ Subsequently, the complainant failed to establish the existence of traffic on the route or that the route was otherwise commercially useful, and its complaint was dismissed.¹⁸⁶

In response to the enactment of the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act,¹⁸⁷ the Commission amended its regulations¹⁸⁸ to facilitate use of administrative dispute resolution procedures in lieu of formal agency procedures: (1) by holding formal proceedings in abeyance while administrative dispute resolution is being pursued; (2) by providing for limited appeal of arbitration decisions; and (3) by protecting the confidentiality of information obtained during the process.¹⁸⁹

The Commission exempted¹⁹⁰ rail market development activities for industrial projects, such as industrial parks, from the Elkins Act anti-rebating provisions.¹⁹¹ The Commission found that the exemption will allow railroads to generate and attract traffic to their lines and thereby to cover their fixed costs and to earn an adequate return without government subsidization or burdening captive customers. Subsequently, the Commission rejected a proposal either to revoke the exemption or to modify it to require disclosure or documentation of activities related to agricultural commodities.¹⁹²

Rules involving railroad transportation contracts filed under 49 U.S.C. 10713 were modified.¹⁹³ One change imposed a notice requirement when contracts are terminated. The other change precludes reinstatement of a contract more than 180 days after its

¹⁸¹ *National Grain & Feed Assoc. v. BN RR. Co., et al.*, 8 I.C.C.2d 421 (1992).

¹⁸² Joint-agency master tariffs ICC RPS 9000 series and ICC TCFB 9500 and 9501 series expired on September 30, 1991.

¹⁸³ The updating of basic rail rate tariffs is required under 49 U.S.C. 10762(d)(2).

¹⁸⁴ No. 40154, *Extension Of Expiration Date Of Master Tariff Increases* (not printed), served October 18, 1991.

¹⁸⁵ No. 40365, *National Starch And Chemical Corporation v. Atchison Topeka And Santa Fe Railway Company, et al.* (not printed), served December 30, 1991.

¹⁸⁶ No. 40365, *National Starch And Chemical Corporation v. Atchison Topeka And Santa Fe Railway Company, et al.* (not printed), served May 27, 1992.

¹⁸⁷ See Administrative Dispute Resolution Act, P.L. 101-552, and the Negotiated Rulemaking Act, P.L. 101-648.

¹⁸⁸ See 49 CFR 1109.

¹⁸⁹ *Use of Alternative Dispute Resolution Procedures*, 8 I.C.C.2d 657 (1992).

¹⁹⁰ *Association of American Railroads—Pet. To Exempt*, 8 I.C.C.2d 365 (1992).

¹⁹¹ 49 U.S.C. 10761(a), 10761(a)(1), 11903, and 11904(a).

¹⁹² *Ex Parte No. 346* (Sub-No. 26B), *Industrial Development Exemption—Non-Exempt Agricultural Shippers* (not printed), served August 20, 1992.

¹⁹³ *Railroad Transportation Contracts*, 8 I.C.C.2d 197 (1991).

expiration date. The Commission also exempted carriers from the requirement to file contracts, other than contracts for agricultural commodities, but continued to require the filing of contract summaries and amended summaries.¹⁹⁴

The Commission dismissed a complaint alleging that Consolidated Rail Corporation would not provide service to a shipper at Scio, OH.¹⁹⁵ The complainant was satisfied with Conrail's sale of the line to a short line railroad.¹⁹⁶

The Commission discontinued a proceeding that would have expanded the ICC Waybill Sample Public Use File to permit disclosure of additional origin and destination data for specified intermodal and transloaded movements.¹⁹⁷ The Commission determined that the proposed modifications might unduly compromise the confidentiality of proprietary shipper information.

The Commission declined to suspend or investigate several proposed tariff changes regarding a cancellation of joint-line rates and routes on kaolin clay;¹⁹⁸ and an increase in reciprocal switching charges on carload movements of grain.¹⁹⁹

The Commission proposed to vacate the agency's prescription of railroad and water carrier uniform bills of lading and livestock contracts.²⁰⁰ Bills

of lading are documents by which carriers acknowledge receipt of freight and contract for its shipment.

An investigation was begun of the Burlington Northern Railroad Company's \$125 charge for use of order bills of lading or straight bills of lading with restricted delivery instructions.²⁰¹ When shippers use order bills of lading, the name of the consignee can be changed because the document is a negotiable instrument. Shippers use order bills to ensure that freight is not delivered until the consignee pays for the goods. Shippers can also use ordinary (straight) bills of lading for this purpose by marking them with restricted delivery instructions. In an open voting conference held on September 22, 1992, the Commission voted to order the charge canceled.

The Commission is required to maintain standards for establishing adequate revenue levels for Class I railroads and annually determines which of them are earning adequate revenues. As part of its procedure for determining revenue adequacy, the Commission estimated the 1991 railroad composite cost of capital to be 11.6 percent.²⁰² The composite cost of capital consists of the weighted average cost of debt and equity capital. To determine a carrier's revenue adequacy status, its cost of capital is compared with its return on investment. For the Nation's 13 Class I railroads, only the Illinois Central Railroad Company was determined to be revenue adequate for 1991.²⁰³ The carriers' economic performances reflect the recent business downturn and certain special charges taken by the railroads. The largest item in

¹⁹⁴ *Railroad Transportation Contracts*, 8 I.C.C.2d 730 (1992).

¹⁹⁵ No. 40330, *Scio Pottery Company v. Consolidated Rail Corporation* (not printed), served March 30, 1992.

¹⁹⁶ See No. 40330, *Scio Pottery Company v. Consolidated Rail Corporation* (not printed), served February 12, 1991.

¹⁹⁷ Ex Parte No. 385 (Sub-No. 3), *Expansion of the ICC Waybill Sample Public Use File* (not printed), served January 23, 1992.

¹⁹⁸ Suspension Case No. 71574, *Cancellation of Joint Rates and Routes on Kaolin Clay, Norfolk Southern* (not printed), served February 13, 1992.

¹⁹⁹ Suspension Case No. 71577, *Increase in Reciprocal Switching Charge at Duluth, MN and Superior, WI* (not printed), served January 17, 1992.

²⁰⁰ Ex Parte No. 495, *Bills Of Lading* (not printed), served December 27, 1991.

²⁰¹ No. 40679, *Charge For "Order Of" Bills Of Lading, Burlington Northern RR* (not printed), served November 20, 1991.

²⁰² *Railroad Cost of Capital—1991*, 8 I.C.C.2d 402 (1992).

²⁰³ *Railroad Revenue Adequacy—1991 Determination*, 8 I.C.C.2d 666 (1992).

the special charges is severance pay connected with recent labor agreements.

The Commission publishes a quarterly Rail Cost Adjustment Factor (RCAF) based on the quarterly all-inclusive index of costs prepared by the Association of American Railroads (AAR). The RCAF reflects current rail transportation costs and is used to adjust rates to reflect cost changes both in published rates and voluntarily in contract rates.

The RCAF is calculated by weighing changes in the expense components of the index (such as labor and fuel) according to the past proportion of total railroad expenses occupied by each expense. When an expense category grows in proportion to total railroad expenses, it may be appropriate to change its weight in the index. During this fiscal year, the Commission investigated whether changes in the size of several expense categories justified a change in the weights for these categories.²⁰⁴ At issue in this investigation is whether the \$3.7 billion in special charges, largely labor buy-outs, taken by the Class I railroads in 1991, are substantial enough to warrant a change in the weights for the labor and other expenses categories and whether the depreciation must be re-weighted.

The RCAF is adjusted for long-run changes in railroad productivity. The Commission changed the methodology for calculating the multi-year productivity trend from an arithmetic average to a geometric average, lengthened the averaging period to eight years (1982-1989), and adopted 1.060 as the productivity value for 1989 under the new methodology.²⁰⁵

The first, second, third, and fourth quarter 1992 RCAF's (adjusted) were

found to be 1.040, 1.024, 1.010, and 1.024, respectively.²⁰⁶ The fall in the RCAF during the first three quarters reflected the fact that productivity gains exceeded inflationary cost increases. During the fourth quarter, however, larger increases in labor costs overwhelmed rising productivity and continued slow growth in other expenses, and, as a result, the RCAF increased.

The Commission declined to institute a declaratory order proceeding to resolve a dispute over the applicability of a Rail Carrier Cost Recovery Tariff and found that the controversy should be resolved through a formal complaint because of its limited significance.²⁰⁷

The Commission's Accounting and Valuation Board approved changes in depreciation schedules adopted by several railroads.²⁰⁸ Changes in depreciation affect rate regulation by affecting depreciation expense and asset valuation.

²⁰⁴ Ex Parte No. 290 (Sub-No. 5) (92-1), *Quarterly Rail Cost Adjustment Factor* (not printed), served December 20, 1991; Ex Parte No. 290 (Sub-No. 5) (92-2), *Quarterly Rail Cost Adjustment Factor* (not printed), served March 20, 1992; Ex Parte No. 290 (Sub-No. 5) (92-3), *Quarterly Rail Cost Adjustment Factor* (not printed), served June 19, 1992; and Ex Parte No. 290 (Sub-No. 5) (92-4), *Quarterly Rail Cost Adjustment Factor* (not printed), served September 18, 1992.

²⁰⁵ No. 40712, *Continental Freight Data Systems v. Southern Railway Company And Norfolk and Western Railway Company* (not printed), served January 23, 1992, *appeal denied* (decision not printed), served March 27, 1992.

²⁰⁶ See *The Matter Of Prescribing Depreciation Rates For Use In Computing Depreciation Charges For Railroads*, Sub-Order Nos.: R-801-E, served October 2, 1991 [Soo Line Railroad Company]; R-396-G, served January 24, 1992 [Southern Pacific Transportation Company]; R-327-J, served January 27, 1992 [Union Pacific Railroad]; R-823-L, served May 8, 1992 [Burlington Northern Railroad Company]; R-801-F, served May 8, 1992 [Soo Line Railroad Company]; R-850-3, served August 11, 1992 [Consolidated Rail Corporation]; R-837-C, served September 16, 1992 [Illinois Central Railroad Company]; and R-827-B, served September 25, 1992 [Chicago & North Western Transportation Company].

²⁰⁴ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served September 18, 1992.

²⁰⁵ *Railroad Cost Recovery Procedures—Productivity Adjustment*, 8 I.C.C.2d 177 (1991).

The Commission certifies State agencies to regulate intrastate rates every five years. The Commission must recertify that the states will continue to regulate railroad rate matters consistently with the Interstate Commerce Act. Following simplified recertification procedures adopted in fiscal year 1989, the agency recertified Oregon for an additional five-year period.²⁰⁹ New Mexico was provisionally recertified.²¹⁰ The Commission granted Missouri's request that the Commission assume regulation of intrastate rail rates.²¹¹

The Commission discontinued a proceeding seeking to nullify on jurisdictional grounds a decision of the California Public Utilities Commission regarding the fare structure of an intrastate passenger service that Southern Pacific Transportation Company operated for the State of California.²¹² The proceeding was terminated after the line was acquired by two local public agencies.

Joint Rate Surcharges, Cancellations, and Competitive Access

The Staggers Rail Act of 1980 provided rail carriers relief from non-compensatory divisions of joint rates by allowing carriers unilaterally to apply surcharges or cancel participation in joint rates.²¹³ Shippers or other carriers could not block such actions unless the

result led to the initiating carrier's obtaining more than 110 percent of variable cost. Congress, concerned about possible competitive disadvantage to small railroads and effects on other sectors, imposed an annual reporting requirement on the Commission.²¹⁴ Conrail, for which these provisions largely were originally intended, at first made extensive, broad use of them. Many early joint rate cancellations did go beyond the 110 percent guideline, and opposing carriers and shippers alleged misuse of this form of pricing freedom to deny competitive access. Several years ago, the Commission established rules to guide cases involving these questions.²¹⁵ The Commission has found over the years, in reporting to Congress on the effects of these provisions, that small railroads have not been disadvantaged as originally feared but in fact have themselves made substantial use of the provisions. As compared with the proliferation of contract rates and exempt quotes, joint rate surcharges and cancellation activity has fluctuated around a low level.

In fiscal year 1992 a wide range of carriers participated in a relatively high level of activity under these provisions, but in all instances the actions were tightly targeted to specific points, commodities, or origin/destination pairs and routings.

Only short line railroads filed new light density line²¹⁶ surcharges. Ten

²⁰⁹ Ex Parte No. 388 (Sub-Nos. 27), *Intrastate Rail Rate Authority—Oregon* (not printed), served April 7, 1992.

²¹⁰ Ex Parte No. 388 (Sub-No. 22), *Intrastate Rail Rate Authority—New Mexico* (in decisions not printed), served March 18, 1992 and September 17, 1992.

²¹¹ Ex Parte No. 388 (Sub-No. 17), *Intrastate Rail Rate Authority—Missouri* (not printed), served September 11, 1992.

²¹² No. 40666, *Southern Pacific Transportation Company—Petition for Review of a Decision of the California Public Utilities Commission* (not printed), served February 26, 1992.

²¹³ 49 U.S.C. 10705a.

²¹⁴ Under Section 217(c)(1) of the Staggers Act, the Commission is to include in each of its annual reports an analysis of the preceding year's surcharge and joint-rate cancellation activity.

²¹⁵ *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985).

²¹⁶ Light density lines, for purposes of the surcharge provision, are those carrying less than 3,000,000 ton-miles of freight per mile for a revenue-inadequate carrier, or 1,000,000 ton-miles for a revenue-adequate carrier, in the most recent calendar year for which data are available. Carriers are authorized to apply light density line surcharges covering up to 100 percent of the reasonably expected costs of continuing to operate a line.

such carriers filed one each,²¹⁷ ranging from \$7 to \$500 per car. Most had very narrow application—some naming a specific commodity and connecting carrier or even a specific shipper.

The Soo Line twice extended its previous \$400 negative surcharge²¹⁸ on chemicals routed through Soo between Kansas City and Chicago.

One Class I carrier, Grand Trunk Western, cancelled a previous surcharge. Six Class III carriers revised or cancelled 11 surcharges; revisions took the form of modifying terms, postponements, or limiting the points to which a surcharge was applicable.

In contrast to the early pattern of joint rate cancellation activity, Conrail registered only three cancellations, involving specific CSX transportation routings on four commodities. In addition, ten other Class I carriers filed 69 joint rate cancellations, with Norfolk Southern, Chicago Northwestern, and CSX Transportation leading the group in the number of actions. Among the Class II carriers, three—Elgin, Joliet & Eastern, Louisiana & Arkansas, and Texas Mexican Rwy. Co.—filed seven cancellations. One Class III carrier, the Chicago & Central Pacific, filed four cancellations; seven other class III carriers filed one each. Commodities most often named among the total of 90 cancellations for all railroads were specific chemicals, black strap molasses, asphalt, motor vehicle parts, and building materials.

The revenue impact of the surcharges is expected—as it has been for several years—to be minor; often the

result of imposing high surcharge amounts is simply to discourage traffic that may be uneconomic.

Only two of the foregoing surcharge or joint rate cancellation actions were challenged before the Suspension Board. In both cases—one involving a joint rate cancellation filing by Norfolk Southern on kaolin clay, and another involving a joint rate cancellation on corn syrup by Southern Pacific on traffic interlined with the Santa Fe—the Commission allowed the actions to go into effect without investigation.

In summary, the joint rate surcharge and cancellation provisions of the Staggers Rail Act continue to be used, affording flexibility where carriers need it to maintain financial viability and with no evidence of competitive harm to shippers or to the short line railroads.

Freight Car Service

As reported by the Association of American Railroads (AAR), the daily average surplus of railroad-controlled freight cars at the end of September 1991 was 44,388 cars, compared to an average of 64,155²¹⁹ cars at the end of September 1992. As of October 1, 1991, Class I railroads reported a combined fleet ownership of 638,889 cars, but by October 1, 1992, that ownership level had dropped to 609,001 cars. This was a net reduction in the combined Class I fleet of 29,888 cars, which is the difference between the number of cars installed (1,554) and the number of cars retired or otherwise transferred from the control of the Class I carriers (31,442). On September 30, 1992, the entire rail car fleet of Class I, II, and III railroads, private car companies, and shippers consisted of 1,172,755 cars, an overall reduction of 22,246 cars from the prior fiscal year.

²¹⁷ All counts of surcharges and cancellations cover those items becoming effective during FY 1992, i.e. October 1, 1991 to September 30, 1992, including those actually filed prior to beginning of the fiscal year.

²¹⁸ While railroad carrier authority to impose commodity surcharges (i.e., not necessarily on light density line traffic) expired on September 30, 1984, negative surcharges (i.e., allowances) may, under a Commission exemption, still be applied.

²¹⁹ Increase in surpluses for fiscal year 1992 is attributable to a changed methodology used by the AAR in compiling car surplus statistics.

The aggregate capacity of railroad and private freight cars in service at the end of calendar year 1991 was 107.0 million tons, a decrease of 1.1 million tons (1.1 percent) from the aggregate capacity of 108.1 million tons at the end of 1990. Since 1984, however, Class I railroads handled a 12.7 percent increase in revenue ton miles. The railroads attribute this increase to improved equipment utilization as indicated by the following table noting significantly improved equipment turnaround times for calendar year 1991.

	Calendar Year			
	1976	1981	1986	1991
Turnaround Time—Days:				
Box.....	28.6	37.7	35.8	36.9
Refrigerator.....	35.6	41.4	47.9	36.1
Gondola.....	21.6	20.5	17.9	13.3
Hopper.....	14.4	14.4	13.2	12.1
Covered Hopper...	23.4	31.0	30.3	28.6
Flat.....	15.1	17.4	10.8	10.3
Average All Cars..	21.6	24.1	20.9	18.9

Source: Association of American Railroads.

The AAR also reported that fiscal year 1992 freight car loadings by Class I railroads totaled 15,543,087, an increase of 95,593 cars from the fiscal year 1991 car loading total of 15,447,494.²²⁰ Relative to individual commodity loadings, coal ranked first with 5,988,141 coal-loaded cars, a decrease of 156,088 cars from the 6,154,229 cars loaded with coal in fiscal year 1991. Cars carrying chemicals ranked second in total loadings with 1,434,380 cars, up slightly from the 1991 loading figure of 1,396,866 cars. The third most frequently loaded commodity was grain, with 1,394,777 cars

during the reporting period, or 51,254 carloads more than the 1,343,523 cars loaded in fiscal year 1991. Car loadings of motor vehicles and equipment increased by 90,512, from 781,827 cars in fiscal year 1991 to 872,339 cars in fiscal year 1992.²²¹ Overall, traffic loadings in 13 of 19 commodity groups increased in fiscal year 1992.

In fiscal year 1992, Class I railroad loadings of trailers and containers increased 395,874 units, from a combined total of 6,159,598 in fiscal year 1991 to 6,555,472 in fiscal year 1992.²²² Container loadings increased by 11.5 percent, while trailer loadings increased by 1.8 percent.

The locomotive ownership of Class I railroads consisted of a total of 18,839 units on October 1, 1992, compared to 19,553 units on October 1, 1991, a 714 unit decrease. At the end of fiscal year 1992, Class I railroads had 37 multipurpose locomotives on order.

Directed Service

The Interstate Commerce Act authorizes the Commission to direct carriers to provide service over another carrier's lines in emergency situations when a failure to provide rail service would create an emergency. Last fiscal year, the Commission authorized the Chicago Central & Pacific Railroad Company (CCP) to operate as a "Directed Railroad Company," uncompensated and without Federal subsidy, over the lines of the Cedar Valley Railroad Company (CVR) between Albert Lea, MN and a connection with the CCP at Waterloo, IA. CVR shut down May 22, 1991, for lack of operating funds. The

²²⁰ Fiscal year 1992 includes used vehicles previously reported as All Other.

²²² Effective January 1, 1989, statistical accounting for the number of TOFC/COFC flatcars loaded was eliminated by the AAR in favor of accounting for the number of trailer/container units loaded.

²²⁰ The fiscal year 1991 loading figures have been revised during the course of this reporting year and thus differ from the data reported in the Commission's previous annual report.

Commission vacated its directed service order effective January 22, 1992.²²³

Passenger Service

Pursuant to the National Railroad Passenger Corporation's (Amtrak) application under section 402(a) of the Rail Passenger Service Act,²²⁴ the Commission set compensation for Amtrak's use of the Bay Colony Railroad Corporation's (Bay Colony) Cape Colony line for Amtrak's weekend service at \$22,838.14 for the period from June 28, 1991 to September 2, 1991.²²⁵ The Commission had previously ordered Bay Colony to provide track, facilities, and service to Amtrak over its 42.7 mile Cape May line in Maine. Bay Colony had sought \$76,796 in compensation, while Amtrak offered \$16,148.90.

The Commission exempted Northern Indiana Commuter Transportation District (District) from the Commission's tariff filing requirements.²²⁶ The exemption only applies to certain special fares

such as weekend travel or off-peak travel. The exemption does not apply to District's tariff for its intercity rail passenger service between Chicago, IL and South Bend, IN.

Pursuant to section 402(c) of the Rail Passenger Service Act of 1970 (RPSA),²²⁷ the Commission can require carriers to operate or allow the operation of Amtrak passenger trains over alternative routes during emergencies. In fiscal year 1992, designated agents of the Commission's Office of Compliance and Consumer Assistance issued two emergency orders²²⁸ granting permission to Amtrak passenger trains to use alternative routes to reach their destinations, thereby preventing rail passenger service interruptions. These orders are issued whenever a railroad company operating an Amtrak train cannot move the train over its normal route, and Amtrak requests movement over an alternative route that exists over the lines of another carrier.

²²³ Directed Service Order No. 1511-A, *Chicago Central & Pacific Railroad Company—Directed Service—Cedar Valley Railroad Company* (not printed), served January 22, 1992.

²²⁴ 45 U.S.C. 562(a).

²²⁵ Finance Docket No. 31895, *National Railroad Passenger Corp.—Section 402(a) of the Rail Passenger Service Act—Order to Require Service and Set Compensation Terms* (not printed), served March 9, 1992.

²²⁶ Finance Docket No. 32067, *Northern Indiana Commuter Transportation District—Exemption from Tariff Filing Requirements—Special Fares* (not printed), served June 18, 1992.

²²⁷ 45 U.S.C. 562(c).

²²⁸ See 49 U.S.C. 562(c).



TRUCKING COMPANIES

Financial Condition

The earnings of the 100 largest trucking companies (excluding the United Parcel Service (UPS) carriers¹ and certain carriers failing to file timely data) declined during the first three months (October 1, 1991 to December 31, 1991) of fiscal year 1992, compared to the same period of fiscal year 1991. Net carrier operating income decreased 18.4 percent to \$160.6 million and net income fell 17.3 percent to \$58.4 million. Operating revenues and revenue tons hauled rose 3.3 percent and 5.3 percent, respectively.

However, as a result of a small improvement in the national economy, the earnings of this same group of carriers for the remaining nine months (January 1, 1992 to September 30, 1992) of fiscal year 1992, rose substantially from the depressed levels of the same period of fiscal year 1991, as net carrier operating income increased 35 percent to \$809.1 million and net income rose 61.1 percent to \$425.2 million. Operating revenues and revenue tons hauled increased 8 percent and 19.6 percent, respectively.²

Motor carriers face intense competition among themselves, as well as from other modes. Much of this competition stems from the reforms provided in the Motor Carrier Act of 1980. Within the ICC authorized subsector alone, for example, the number of motor carriers grew from 18,045 in 1980 to 49,872 by July 31, 1992.

Figures that show entry by new motor carriers, however, understate the industry's competitive strength. The extent of contract, 48-State, and brokerage authority tell a more complete story. Contract authority allows carriers to tailor specific service features to individual cus-

tomers, and the fact that contract rates need not be filed at the Commission facilitates greater price competition among carriers bidding to secure shippers' business. In 1980, only about one-third of all ICC-authorized carriers held contract authority, and a contract carrier was permitted to serve only eight shippers prior to enactment of the Motor Carrier Act of 1980. In 1992, nearly 78 percent of all ICC-authorized carriers held contract authority, and there is no limit to the number of shippers the carrier could serve. Similarly, whereas 48-State operating authority was held by very few carriers in 1980, about 17,000 held it in 1992.

Finally, the number of ICC-licensed brokers continues to grow, from fewer than 100 in 1980 to approximately 7,600 in 1992. Brokers perform an important service by matching shippers with carriers, providing increased service options for shippers and increased competition among carriers.

Intercity less-than-truckload (LTL) traffic is dominated by the larger ICC-authorized carriers. While the successful larger carriers increased their share of national LTL revenues over the past decade, these gains were generally achieved by expansion into new territories rather than by expansion and increased concentration within carriers' previous markets. Such growth has intensified competition and thereby increased the number of efficient carriers available to shippers in many markets.

Mergers and Unifications

The Nation's motor carriers continued to use the Commission's expedited exemption and small carrier transfer procedures³ to effect changes in their financial structures and to transfer operating authorities.⁴

¹ The UPS carriers are not included because their operations (shipments of relatively small packages) are generally dissimilar from other carriers in the regulated motor carrier industry.

² Revenues, earnings, and traffic volume data are from Motor Carrier Quarterly Report Form QFR.

³ See 49 CFR Parts 1186 and 1181, respectively.

⁴ The transactions are permitted under 49 U.S.C. 11343(e) and 10926, respectively.

The Commission continued to consider safety fitness a substantive issue in deciding whether to approve a transfer under 49 U.S.C. 10926 or to grant an exemption under 49 U.S.C. 11343(e). The Commission examines the U.S. Department of Transportation's (DOT) safety fitness ratings of carriers involved in finance transactions. Under the policy it adopted during the 1991 fiscal year, the Commission focuses on the DOT safety fitness ratings held by acquiring or surviving carriers and, generally, rejects a finance transaction if approval would result in the acquisition or control of operating authority by a carrier holding an "unsatisfactory" safety fitness rating from DOT. During the year, the Commission denied a small carrier transfer application in light of un rebutted evidence from its Office of Compliance and Consumer Assistance demonstrating that the transferee was affiliated with an "unsatisfactory"-rated transferor.⁵ The Commission imputed the fitness rating to the transferee.

The Commission has determined that its exclusive jurisdiction⁶ over motor property finance transactions extends to the transfer of intrastate operating authorities as part of a broader transaction involving a carrier's interstate rights. During the year, the Commission issued several decisions reaffirming and applying its statutory authority to effect the transfer of State operating authorities under its exemption procedures.⁷ The Commission re-

jected contentions that, in asserting its preemption authority, it is violating the national transportation policy requiring cooperation with the States on transportation matters.⁸ In a proceeding involving a purchase of authority, the Commission rejected the argument that section 11343 applies only to "mergers, consolidations, or acquisitions."⁹ It reaffirmed findings that the section also covers "purchases, leases, or contracts to operate property" of motor carriers.

The Commission rejected a complaint by employee interests seeking labor protection conditions on a purchase of operating authority.¹⁰ The Commission cited its long established policy of providing only limited labor protective conditions for motor carrier employees and then only in cases in which a definite showing has been made that certain employees have been or would be adversely affected. As the focus of the employee interests appeared to be compensation for services performed under contracts, the Commission suggested that recourse be sought with the courts.

Rates and Rate Bureaus

The Commission denied a petition by the Regular Common Carrier Conference (RCCC) to institute a proceeding to: (1) define a standard of reasonableness for minimum motor carrier rates; (2) declare that motor carrier tariffs must reflect, clearly and explicitly, actual rates charged on particular traffic; and (3) require motor contract carriers to file tariffs.¹¹ The Commission's decision surveyed the financial condition of the motor carrier industry in general, and

⁵ No. MC-FC-85412, *National Transportation Corporation—Small Carrier Transfer Application—Transsurface Carriers, Inc.* (not printed), served April 27, 1992.

⁶ See 49 U.S.C. 11341(a).

⁷ No. MC-F-19941, *Yellow Transportation, Inc.—Purchase Exemption—Jones Truck Lines Inc.*, (not printed), served February 11, 1992 (Yellow); No. MC-F-19980, *Gresham Transfer, Inc.—Purchase Exemption—Merle Swanson, d/b/a Swanson Trucking Service* (not printed), served April 17, 1992 (Gresham); and No. MC-F-20008, *Circle "E" Farms, Inc.—Purchase Exemption—G.L. Osmundson d/b/a Osmundson Hay Co.* (not printed), served May 4, 1992.

⁸ *Gresham, supra*.

⁹ *Yellow, supra*.

¹⁰ No. MC-F-19959, *Highway Transport, Inc.—Purchase Exemption—Central Transport, Inc.* (not printed), served February 26, 1992.

¹¹ *Pet. of Regular Common Carrier Conference*, 8 I.C.C.2d 340 (1992).

the LTL sector in particular, over the past decade, and concluded that the industry's performance is not being undermined by market failure, and that in fact the market is working as Congress intended it to after passage of the Motor Carrier Act of 1980. While recognizing that the LTL sector has been faced with unprecedented upheavals during the years since passage of the Motor Carrier Act of 1980, it has not been demonstrated that the industry cannot adjust itself to the changing needs of the shipping public without intervention by the Commission. The Commission emphasized that the statutory "rule of ratemaking" at 49 U.S.C. 10701(e) has never been construed to require specific maximum rate standards nor require rules for minimum rates.

The Commission also denied a petition by two shippers' conferences for a policy statement providing guidelines concerning released value rates and inadvertence clauses, particularly with respect to commodities of extraordinary value.¹² The Commission found no need shown for a policy statement or regulations as a substitute for released rates and liability levels set independently, subject to complaint or protest.

Because application of the Commission's negotiated rates policy was discontinued following its rejection by the Supreme Court,¹³ the Commission continued to process cases involving carrier claims for undercharges on the basis of the involved parties' updated submissions following the suggestions and guidelines offered by the Commission.¹⁴ In a significant decision affecting claims against 62 shippers, the Com-

mission discussed the consequences of a carrier's failure to have complied with applicable regulations concerning powers of attorney or concurrences in the context of tariffs referring to the Household Goods Carriers' Tariff Bureau, Inc. (HGCB Mileage Guide).¹⁵ Similar issues relating to participation in a classification tariff were discussed in another case involving four shippers. The Commission found that the carriers were not parties to the respective mileage guide or classification tariffs, as required by law, and thus not legally permitted to use these tariffs to determine their rates.¹⁶ A number of other decisions resulted in similar findings.¹⁷ As a result of the *Wonderoast* decision, the National Motor Freight Traffic Association (NMFTA) requested that the Commission cancel the tariffs of 176 carriers that refer to the NMFTA classification, but are filed by or on behalf of non-participating carriers.¹⁸ The proceeding was pending at the close of the fiscal year.

¹² *Jasper Wyman & Son Et Al.—Pet. for Declaratory Order*, 8 I.C.C.2d 246 (1992).

¹³ *Wonderoast, Inc.—Transp. Systems International, Inc.*, 8 I.C.C.2d 272 (1992) (*Wonderoast*).

¹⁴ No. 40232, *Honeywell, Inc. v. Transportation Systems International, Inc. and Transport Audit Service, Inc.* (not printed), served June 26, 1992; No. 40336, *Ashland Chemical Company—Petition for Declaratory Order—Certain Rates and Practices of Squaw Transit Company* (not printed), served May 6, 1992; No. 40477, *7/24 Freight Sales, Inc. v. Atlantis Express, Inc.* (not printed), served May 7, 1992; No. 40526, *Amoco Fabrics and Fibers Company v. Max C. Pope, Trustee of the Estate of A.T.F. Trucking, Inc.* (not printed), served February 26, 1992; No. 40599, *Friedman Bag Company, Inc. v. Max C. Pope, Trustee of the Estate of A.T.F. Trucking, Inc.* (not printed), served May 26, 1992; and No. 40602, *Menasha Corporation, F/K/A Traex Corporation, and W.T. Rogers Company, Inc. v. United Shipping Company, Inc.* (not printed), served May 7, 1992.

¹⁵ See, No. 40674, *National Motor Freight Traffic Association—Petition for Cancellation of Tariffs that Refer to the National Motor Freight Classification, But Are Filed By or On Behalf of Non-Participating Carriers* (not printed), served February 5, 1992.

¹² *Ex Parte No. MC-201, Limitations of Liability for Loss and Damag.* (not printed), served November 22, 1991.

¹³ *Maislin Industries, U.S. v. Primary Steel Inc.*, 497 U.S. 116, 110 S.Ct. 2759 (1990).

¹⁴ *Rate Reasonableness and Unreasonable Practices*, 8 I.C.C.2d 61 (1991).

The Commission found that some parties attempting to collect the asserted "filed rate" may be basing their claims on inapplicable or invalid tariffs, or on misreading of the applicable tariffs. In some instances the Commission's independent review showed that the filed tariff rates were different in several material aspects from those asserted by parties in claiming undercharges.¹⁹ In others, the record was so devoid of facts that it was not possible to make any determination concerning tariff applicability or rate reasonableness.²⁰ In these cases, the Commission discussed the types of evidence needed to determine issues of tariff applicability and reach rate reasonableness in undercharge claims and reopened the records for taking of additional evidence. The Commission directed one respondent to advise the shipper of the exact filed tariff upon which it is basing its undercharge claim.²¹ More than 125 petitions for declaratory relief from undercharge claims were dismissed by the Commission for failure to comply with procedural schedules or withdrawn by petitioning shippers for various reasons.²²

The Commission was also confronted with a new line of undercharge cases in which trustees and agents for

nonoperating carriers (1) repudiated filed tariffs asserting different tariffs applied,²³ or (2) claimed that the prior service offered and billed as contract carriage was in fact common carriage,²⁴ to which the higher filed rates applied. To address these problems, the Commission promulgated rules²⁵ providing that a nonoperating carrier, its trustees, agents or assigns, may not unilaterally disavow the tariff rate under which a past shipment moved, or the contract if the shipment moved as contract carriage, without prior Commission review and authorization to pursue the undercharge claim or class of claims.²⁶

At the close of the fiscal year, the Commission instituted several proceedings to determine whether the so-called "range tariffs" of specified carriers are legal, because, inasmuch as the concerned tariffs of these carriers disclose only a range of possible rates or discount factors, with no specific criteria by which the exact rate can be determined, they appear to violate rate disclosure requirements.²⁷ In a separate proceed-

¹⁹ See e.g., No. 40521, *Conagra, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Hagen, Inc.* (not printed), served April 16, 1992.

²⁰ See e.g., *Vertex Corp. Pet. Declar. Order Rates and Practices*, 8 I.C.C.2d 701 (1992) (*Vertex*); followed No. 40677, *Midwest Carriers Corp.—Petition For Declaratory Order—Certain Rates and Practices of Best Refrigerated Express, Inc.* (not printed), served September 2, 1992 (*Midwest*).

²¹ *Vertex*, *supra*.

²² See e.g., *Amarillo Gear Company and Ten Other Shippers—Petition for Declaratory Order—Certain Rates and Practices of Advance United Expressways, Inc.* (not printed), served December 26, 1991, consolidated proceeding dismissed for want of prosecution (decision not printed) served February 24, 1992.

²³ See *Olympia Holding Co., f/k/a Nationwide, Inc., et al. Show Cause Order* (not printed), served May 4, 1992. Also No. 40518, *Sun Chemical Corporation v. Suburban Motor Freight, Inc. and Delta Traffic Service, Inc.* (not printed), served December 12, 1991.

²⁴ See *General Mills, Inc.—Petition for Declaratory Order*, 8 I.C.C.2d 313 (1992); No. 40541, *W. W. Grainger, Inc. v. United Shipping Company, Inc.* (not printed), served May 27, 1992; and No. 40691, *GS Brokerage, Inc.—Petition for Declaratory Order—Certain Rates and Practices of Best Refrigerated Express, Inc.* (not printed), served September 29, 1992. See also *Vertex* and *Midwest Carriers*, *supra*.

²⁵ *Nonoperating Motor Carriers—Collection of Undercharges*, 8 I.C.C.2d 742 (1992); (effective date extended) 9 I.C.C.2d 33 (1992); (petitions for administrative stay of rules denied) 9 I.C.C.2d 35 (1992).

²⁶ See 49 CFR 132.1.

²⁷ No. 40843, *Tariffs of Certain Motor Common Carriers Containing "Ranges of Rates"—Show Cause Proceeding* (not printed), served August 20, 1992; and No. 40848, *Tariffs of Certain Motor Common Carriers Containing "Ranges of Discounts"—Show Cause Proceeding* (not printed), served September 8, 1992.

ing,²⁸ the Commission ordered cancellation of a carrier's tariff because it failed to provide the requisite disclosure.²⁹

Amendments to the ratemaking agreements of two rate bureaus to permit expansion of services to traffic moving in foreign commerce between points in the United States and points in Mexico were approved.³⁰ The amendments allow for the creation of California-Mexico Dry Freight Committees, which will have authority to establish and periodically revise new tariffs to be published in their respective rate territories. These changes are intended to facilitate the movement of traffic in foreign commerce with Mexico.

Operating Rights

The Commission proposed to adopt revised licensing application forms for various types of operating authorities.³¹ Under the proposal, a series of six simplified forms designed to accommodate requests for operating authorities in separate areas would replace the comprehensive standard licensing application form, Form OP-1, presently in use. Corresponding revisions to the Commission's regulations would direct prospective applicants to the appropriate licensing forms and would assist them in using the revised forms. The Commission anticipates that the proposed replacement forms and corresponding revised licensing regulations will reduce significantly the time

required of applicants and their representatives in reviewing filing instructions and preparing licensing requests. At the same time, the Commission believes that the proposed revisions will facilitate the efficient gathering of all information essential to the application review process. The Commission has invited comments from interested parties, and the proceeding was pending at the end of the fiscal year.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), amended the law governing motor carriers' registration of their operating authorities and vehicles with States.³² Under the new law, the Commission must adopt new regulations by January 1, 1994, replacing the current multi-State registration system (also known as the bingo-stamp program) with a simplified, base-State insurance registration system that does not involve the identification of specific vehicles. The Commission initiated a proceeding to formulate the required regulations,³³ and requested that the trucking industry, State regulatory agencies, and other interested parties to participate in the process. The proceeding was pending as the year closed.

Pending promulgation of final rules in this area, the Commission adopted transitional rules to relieve the trucking industry of undue administrative burdens that the existing registration system was imposing.³⁴ The transitional rules eliminated the so-called "bingo card" system under which States issued stamps that carriers were to affix

²⁸ No. 40641, *Morgan Drive Away, Inc. ICC MODA 442, Show Cause Proceeding* (not printed), served June 12, 1992.

²⁹ See 49 CFR 1312.

³⁰ Section 5a Application No. 60 (Amendment No. 8), *Rocky Mountain Motor Tariff Bureau, Inc.—Agreement* (not printed), served November 14, 1991; and Section 5a Application No. 70 (Amendment No. 10), *Western Motor Tariff Bureau, Inc.—Agreement* (not printed), served August 13, 1992.

³¹ Ex Parte No. 55 (Sub-No. 86), *Revision of Licensing Application Forms and Corresponding Regulations* (not printed), served August 19, 1992.

³² 49 U.S.C. 11506, enacted in Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240.

³³ Ex Parte No. MC-100 (Sub-No. 6), *Single State Insurance Registration* (not printed), served May 8, 1992.

³⁴ *Single State Insurance Registration—1993 Rules*, 9 I.C.C.2d 1 (1992), petition to stay and reopen denied in a decision (not printed), served September 28, 1992.

to cards to be carried in each of their cabs. The transitional rules retained and augmented permission to State regulatory agencies to assign motor carriers identification numbers. The transitional rules faced strong opposition from State regulatory agencies; and, shortly after the Commission took final action implementing them, the opponents of the rules obtained a judicial stay.³⁵

The Commission issued a policy statement reviewing guidelines for motor carriers and shippers to determine the interstate or intrastate nature of for-hire motor traffic moving from warehouses or similar facilities to points in the same State after a for-hire movement from another State.³⁶ The Commission also decided two significant cases in which the interstate or intrastate nature of the transportation was in issue. In one case, the Commission found that certain for-hire transportation from Texas warehouses to Texas destinations was interstate commerce.³⁷ The Commission found that the fact that the subject traffic was routed out of the warehouses by the warehousemen did not, by itself, change the interstate character of the movements within Texas. The Commission highlighted the importance of the shipper's fixed intention that its goods move through to their final destinations within Texas. In the other case, the Commission clarified that single-State transportation, in interstate or foreign commerce, is immune from State regulation regardless of whether it is subject to regulation by the Commission.³⁸

In the area of contract carriage, the Commission repealed its regulations³⁹ defining a contracting shipper and specifying that contracts be retained and meet other specified requirements.⁴⁰ The Commission concluded that the regulations are not required by statute and do not further goals of the national transportation policy. Repeal of the regulations will benefit the transportation public, particularly those shippers and carriers that need greater speed and flexibility in developing and executing contracts. The Commission also dismissed a complaint alleging that a carrier's small parcel transportation service held out as motor contract carriage did not meet the statutory requirements for contract carriage and had to be offered to all shippers on a nondiscriminatory basis.⁴¹

The Commission conducted several proceedings in which it considered repealing unnecessary regulations. The Commission modified its regulations to eliminate the requirement that the United States Postal Service file copies of its contracts with common carriers providing transportation of mail.⁴² In lieu of the filing requirement, the Commission will require the Postal Service to supply copies of its contracts on request. The Commission also deleted the rule indicating that no specific operating authority is necessary for the return transportation of shipping containers by carriers that perform the outbound movement using the containers.⁴³ The rule was no longer necessary

³⁵ *National Ass'n of Regulatory Util. Comm'rs v. ICC*, No. 92-1439 (D.C. Cir. September 30, 1992).

³⁶ *Motor Carrier Interstate Transportation*, 8 I.C.C.2d 470 (1992).

³⁷ *Certain For-Hire Motor Carrier Transp. Within Texas*, 8 I.C.C.2d 476 (1992).

³⁸ No. MC-C-30129, *Pittsburgh-Johnstown-Altoona Express, Inc.—Petition for Declaratory Order* (not printed), served May 7, 1992.

³⁹ 49 CFR Part 1053.

⁴⁰ *Contracts for Transportation of Property*, 8 I.C.C.2d 520 (1992), petition for stay denied in Ex Parte No. MC-198, *Contracts for Transportation of Property* (not printed), served June 17, 1992.

⁴¹ *Zoneskip, Inc. v. UPS, Inc., And UPS of America, Inc.*, 8 I.C.C.2d 645 (1992).

⁴² *Earlier Disposal of Postal Contracts*, 8 I.C.C.2d 563 (1992).

⁴³ *Interpretations and Routing Regulations*, 8 I.C.C.2d 726 (1992).

because it had been superseded by statutory provisions.

A rule empowering Commission personnel to inspect motor carrier and broker property and records was repealed because the regulation essentially paraphrased a statutory provision.⁴⁴ The Commission also deleted from its regulations a list of forms prescribed for use in various Commission proceedings.⁴⁵ It found that the list satisfied no legal requirement and served no useful purpose because the information was available elsewhere in the rules. The Commission also proposed to eliminate the requirement that a private carrier engaged in incidental for-hire transportation conduct such operations independently of its private operations and maintain separate records for each.⁴⁶ The Commission invited comments from interested parties, and the proceeding was pending at the end of the fiscal year.

The Commission amended its regulations concerning the leasing of equipment and drivers to carriers.⁴⁷ Because the prior language of the regulations had caused unintended results with respect to questions of agent status, the Commission adopted a provision clarifying that the leasing regulations were not intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the involved authorized carrier lessee. The Commission also instituted a declaratory order proceeding to determine whether a lease must specify the terms of a separate equipment purchase or rental contract between the lessor and a third party,

and whether a motor carrier must treat money remitted to a third party's escrow fund as the carrier's own escrow fund when the third party and the carrier are affiliates.⁴⁸ The proceeding was pending at the close of the fiscal year.

A proceeding was instituted to consider amending the commercial zone regulations to define specifically a commercial zone embracing El Paso County, TX, and Dona Ana and Luna Counties, NM.⁴⁹ The Commission acted in response to a petition jointly filed by the county governments and a broad coalition of government, economic, and civic interests. The Commission received comments from interested parties, and the proceeding was pending as the fiscal year closed.

Safety

Under the Commission's revised safety fitness policy affecting both the licensing and finance dockets,⁵⁰ only those motor carriers holding "unsatisfactory" safety fitness ratings from the U.S. Department of Transportation (DOT) are restricted from receiving operating authority. Unrated carriers and those holding "conditional" safety fitness ratings (including applicants seeking passenger-carrier and hazardous-materials authorities) are no longer issued one-year limited term authority.⁵¹

⁴⁴ No. MC-C-30192, *Dart Transit Company—Petition for Declaratory Order—Leasing Regulations* (not printed), served January 28, 1992.

⁴⁵ Ex Parte No. MC-37 (Sub-No. 41), *Petition to Establish a Commercial Zone of El Paso County, Texas, and Dona Ana and Luna Counties, New Mexico* (not printed), served March 9, 1992.

⁴⁶ *Safety Fitness Policy*, 7 I.C.C.2d 921 (1991), and 8 I.C.C.2d 123 (1991).

⁴⁷ The revised policy is compatible with and reinforces the various statutory and regulatory revisions that recently have redefined the safety compliance environment for the motor carrier industry. The Commission believes that the revisions will enhance, rather than in any sense compromise, the Commission's safety oversight role and should promote the industry's ability to conduct safe and efficient motor carrier operations.

⁴⁴ *Inspection of Records*, 8 I.C.C.2d 728 (1992).

⁴⁵ *List of Forms*, 8 I.C.C.2d 732 (1992).

⁴⁶ Ex Parte No. 55 (Sub-No. 87), *Interpretations and Routing Regulations* (not printed), served June 1, 1992.

⁴⁷ *Lease and Interchange of Vehicle Regulations*, 8 I.C.C.2d 669 (1992).

When carriers applied for new or extended operating authority, the Commission examined their DOT safety fitness ratings and either accepted their applications for filing or, where appropriate, rejected them.

The Commission denied a petition to reopen the proceeding adopting the safety fitness policy.⁵² The Transportation Lawyers Association urged the Commission to adopt independent safety fitness standards for certain licensing applicants otherwise exempt from DOT safety fitness regulations.⁵³ The Commission reaffirmed that its general fitness evaluation mechanisms and application review procedures are sufficient to ensure that any safety-deficient small vehicle operators can be identified and pertinent safety concerns addressed.

The Commission proposed to adopt revised licensing application forms for various types of operating authorities.⁵⁴ The Commission indicated that the proposed revisions were in large measure directed toward satisfying its commitment to explain more fully the safety compliance obligations of carriers that have not yet been or may never be the subjects of any type of safety fitness oversight evaluation by DOT. The Commission will continue to observe its commitment to ensure parity between the licensing and finance dockets when applying safety fitness policy provisions and invited comments on its preliminary conclusion that it could effectively enforce its safety fitness policy in finance proceedings without further revising the

rules or forms involved in such cases. As the fiscal year closed, the Commission was evaluating comments received in the proceeding.

Foreign Carriers

The Commission continued to receive and process applications by Mexican-domiciled motor carriers for certificates of registration authorizing operations into the United States, primarily into commercial zones of municipalities along the international boundary line.⁵⁵

Under the law, a Mexican-domiciled private carrier owned or controlled by "persons of Mexico" may serve only border commercial zones, whereas a private carrier owned or controlled by "persons of the United States" may serve all points in the United States.⁵⁶ In a proceeding involving a carrier owned by a person who was a resident of Mexico but a citizen of Australia, the Commission interpreted "persons of the United States" to mean "citizens" of the United States, and it therefore determined that the carrier could not be granted authority to provide service beyond border commercial zones.⁵⁷

The Commission also found that the term "domicile" of a motor carrier is where it bases its trucking operations, not where its owners may live. Therefore, an applicant whose operations are based in the United States was found not to be a Mexican motor private carrier for purposes of Section 10530, requiring a certificate of registration.⁵⁸

In the enforcement area, the Commission suspended a carrier's certificate of registration for six months upon find-

⁵² Ex Parte No. 55 (Sub-No. 84), *Safety Fitness Policy* (not printed), served December 26, 1991.

⁵³ Specifically, the Transportation Lawyers Association challenged the Commission's decision not to develop independent safety compliance standards for applicants seeking to provide passenger carrier operations in vehicles transporting 15 or fewer passengers.

⁵⁴ Ex Parte No. 55 (Sub-No. 86), *Revision of Licensing Application Forms and Corresponding Regulations* (not printed), served August 19, 1992.

⁵⁵ See 49 U.S.C. 10530.

⁵⁶ 49 U.S.C. 10922(i)(2)(B)(iii) and 10922(i)(2)(B)(iv), respectively.

⁵⁷ No. MX-247561, *M.I.M.C. S.A. DE C.V.* (not printed), served June 16, 1992.

⁵⁸ No. MX-248233, *Hospital Textile Systems, Inc., Foreign Motor Carrier Certificate of Registration* (not printed), served January 7, 1992.

ing that the carrier had willfully operated in violation of the territorial restrictions and limitations in its certificate.⁵⁹ The Commission also issued show cause orders in proceedings in which it appeared that Mexican private carriers had obtained operating authority through fraud and had operated beyond the territorial limits of their certificates of registration.⁶⁰

The Commission has continued to enforce the statutory requirement that it not issue certificates or permits under 49 U.S.C. 10922 or 10923 for operations by Mexican-domiciled or Mexican-owned or controlled motor carriers to points within the United States that extend beyond commercial zones. In appropriate situations, the Commission denied applications upon information that the applicants were owned or controlled by citizens of Mexico.⁶¹ The Commission reopened and denied one finance transfer application on finding that the transferee's owner had falsely certified that he was not a Mexican citizen.⁶² The Commission revoked the

transferee's certificate and reissued the authority to the previous holder.

Household Goods

In a significant action, the Commission granted the application by United Van Lines, Inc., and its carrier agents for authorization to modify their existing pooling agreement by extending all its terms and conditions to include the transportation of general commodities.⁶³ The superseded agreement had applied only to household goods transportation. The Commission found that its action would permit United to compete more effectively with non-affiliated general freight carriers for certain types of traffic. Although it approved the application, the Commission noted that Congress' authorization for motor carrier pooling agreements to encompass ratemaking applies only to household goods carriers. Therefore, the Commission advised the applicants that its approval did not authorize them to participate in collective ratemaking for general commodities service.

The Commission also approved new pooling applications filed by household goods' carriers and their agents.⁶⁴ The Commission found that, by increasing the carriers' operational efficiency, the pooling arrangements would improve their competitive posture. In order to ensure that the agreements would not unduly restrain competition, the Commission required that they provide that any qualified carrier be permitted to join them.

The Commission's staff continues to assist shippers with complaints against household goods carriers. Dur-

⁵⁹ No. MX-226803, *Jorge Romo—Suspension of Certificate of Registration for Foreign Motor Carrier* (not printed), served August 4, 1992.

⁶⁰ See e.g., No. MX-225697, *Lazaro O. Zazueta—Suspension of Certificate of Registration for Foreign Motor Carrier*; No. MC-244516, *San Pablo Trucking, Inc., Common Carrier Application* (not printed), served July 2, 1992; No. MC-241433, *Miguel Angel Garcia d/b/a Originales Alejandra Transportation—Revocation of Permit*; and No. MX-226197, *Originales Alejandra Y/O Miguel Angel Garcia—Suspension of Certificate of Registration for Foreign Motor Carrier* (not printed), served August 5, 1992.

⁶¹ See, e.g., No. MC-244361, *Daniel Escarcega Tarrn, d/b/a Transportes Express San Quintin, Contract Carrier Application* (not printed), served February 27, 1992; No. MC-249207, *Carlos Calderon, Arnoldo Haros, and Leopoldo Bolivar Leon, d/b/a Calderon & Haros Trucking* (not printed), served May 27, 1992; and No. MC-248819, *Universal Import and Export, Inc., Common Carrier Application* (not printed), served June 9, 1992.

⁶² No. MC-200698 (Sub-No. 1), *T.J.C., Incorporated—Revocation of Certificate*, and No. MC-FC-85280, *T.J.C., Incorporated Transferee and T.J.C. Corporation Transferor* (not printed), served September 23, 1992.

⁶³ Nos. MC-F-4901 and MC-F-6152, *United Van Lines, Inc.—Pooling Agreement Modification* (not printed), served April 14, 1992.

⁶⁴ No. MC-F-19849, *Graebel Van Lines, Inc., and Frank L. Castine, Inc., d/b/a Castine Motor Service—Pooling Agreement* (not printed), served November 21, 1991; and No. MC-F-20019, *Bekins Van Lines Co. and Bekins Moving & Storage Co.—Pooling Agreement* (not printed), served May 6, 1992.

ing fiscal year 1992, the Commission received approximately 2,600 household goods complaints from shippers, which was approximately the same number of complaints received in fiscal year 1991.

The Commission published a revised edition of the consumer pamphlet on moving.⁶⁵ The new pamphlet includes information for shippers of household goods on how to identify a mover's agent for service of legal process if a lawsuit is filed against the carrier. In addition, the revised publication informs consumers of the regulatory change that governs the refunds of a proportional share of the freight charges for loss or destroyed articles at the time the claims are processed.⁶⁶ Further, the revised publication also explains the regulatory change that allows movers to limit their liability for loss and damage to articles of extraordinary value under certain conditions.⁶⁷

Insurance

The Commission requires ICC-regulated transportation entities to file and maintain with the Commission evidence of financial responsibility for the protection of the public at the required minimum security limits.⁶⁸ Motor carriers and freight forwarders can meet these requirements by filing certificates of insurance, surety bonds, proof of qualification to self-insure, or other securities or agreements in the amounts prescribed.

Property brokers subject to the Commission's regulations can meet these financial responsibility requirements by filing either surety bonds or trust fund agreements in the amount of \$10,000.

During fiscal year 1992, the Commission received a total of 99,343 insurance-related filings, which represented an increase of nearly four percent over the number received during fiscal year 1991. These filings included 56,422 bodily injury and property damage and cargo certificates of insurance, 2,028 property broker surety bonds and trust fund agreements, and 40,893 notices of cancellation. During the fiscal year, the Revocation Board issued over 33,500 decisions involving notices of cancellation.

The Commission continued to review applications filed by motor carriers for authority to self-insure their bodily injury and property damage and cargo liability.⁶⁹ During fiscal year 1992, the Commission granted four self-insurance application requests. Self-insured carriers are required to file periodic reports and the Commission continued to maintain a comprehensive monitoring program to ensure that the public remained protected under these initiatives.

The Commission's Insurance Board granted waivers of bodily injury and property damage insurance requirements to freight forwarders of household goods. These waivers are conditional and are valid only as long as these forwarders maintain provisions in their tariffs to provide that: (1) they do not own or operate any motor vehicles upon the highways in the transportation of property; (2) they do not perform transfer, collection, or delivery services; and (3) no motor vehicles are operated under their direction and control in the performance of transfer, collection, and delivery service subject to Subchapter IV, Chapter 105, Subtitle IV of Title 49 of the *United States Code*.

⁶⁵ Revision of Publication OCP-100, *Your Rights and Responsibilities When You Move*, Notice dated September 4, 1991, Fed Reg Doc 91-21630. Under 49 CFR 1056.2(b)(2), notice of amendments to publication OCP-100 must be published in the *Federal Register*. None of these changes constitute a material change requiring notice and comments.

⁶⁶ *HHG Carriers-Proportional Freight Charges*, 5 I.C.C.2d 836 (1989), revising the rules at 49 CFR 1056.15.

⁶⁷ *Practices of Motor Common Carriers of Household Goods*, 6 I.C.C.2d 666 (1990), and 6 I.C.C.2d 850 (1990). See 49 CFR 1056.12(b)(2).

⁶⁸ 49 U.S.C. 10927.

⁶⁹ 49 U.S.C. 10927 and 49 CFR 1043.5.

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BUS COMPANIES

Financial Condition

The earnings of Greyhound Lines, Inc. (Greyhound), which is the Nation's only transcontinental bus company and accounts for more than 75 percent of the revenues generated by all Class I bus companies, substantially improved in fiscal year 1992, compared to fiscal year 1991. For example, net carrier operating income rose to almost \$42 million from \$23.2 million.¹ Greyhound achieved a \$5.2 million net profit for fiscal year 1992, compared to an \$28.3 million net loss for the same period of 1991. However, as a result of the sluggish economy, operating revenues and revenue passengers carried declined 8.6 percent and 18.5 percent, respectively. The large improvement in earnings is attributed by management to operating efficiencies and cost containment strategies implemented after Greyhound filed for Chapter XI bankruptcy on June 4, 1990. The company emerged from bankruptcy on October 31, 1991, after which operations were conducted in accordance with a reorganization plan overwhelmingly approved by creditors.

Greyhound's cash and liquidity position improved substantially during fiscal year 1992 as a result of the carrier's sale in April and May 1992 of \$98.9 million of 8.5 percent convertible subordinated debentures due in 2007. The proceeds from this public offering were used primarily to liquidate about \$76 million of long-term debt which resulted in the elimination of substantial principal amortization payments over the next six years, and a substantial increase in borrowing capability from a revolving credit loan.

The composite earnings of nine of the largest regional intercity bus com-

panies for fiscal year 1992 increased in comparison to the same period of 1991. Net carrier operating income rose \$1.5 million to \$10.9 million and net income increased \$0.9 million to \$6.7 million. Ridership declined 2.2 percent and operating revenues rose 1.5 percent.

Operating Rights

The Commission considered a substantial number of motor carrier applications for authority to transport passengers. Most of the common carrier applicants, and nearly all of the contract carrier applicants, sought authority to conduct charter and special operations, and the remainder sought authority to provide scheduled service over specified routes. The Commission considered a number of cases under its procedures for preempting State regulation to advance the goals of the national transportation policy as applied to passenger carriers.

During the fiscal year, the Commission issued several decisions considering the scope of regular-route operating authorities. In a case involving operations through the Borough of Staten Island, NY, the Commission determined that, although the involved carrier's certificate specified a route of movement across the borough, it did not limit the scope of the carrier's operations in the borough.² The Commission pointed out that its regular-route certificates authorize service to all points in any municipality that is an intermediate point on an authorized route and that the Commission specifies particular boroughs of New York in certificates as if they were independent municipalities. The Commission declined to grant another carrier authority to serve all points in Nassau and Suffolk Counties, NY, as off-route points in connection with a

¹ Revenues, earnings, and ridership data are obtained from quarterly reports filed by Class I motor carriers of passengers.

² No. MC-211552 (Sub-No. 1), *Beckett Limousine Service, Inc.* (not printed), served April 8, 1992.

grant of authority to operate over specified routes through Long Island, NY.³ The Commission discussed its practice of refraining from including off-route-point authority, which is inherently non-route-specific in nature, in certificates of passenger carriers—particularly those that authorize regular-route operations in intrastate commerce under preemption provisions of the statute.

In a case involving operating rights granted under the preemption provisions of the statute, the Commission ordered a carrier to cease and desist from conducting operations in intrastate commerce within Colorado under color of a Commission-issued certificate.⁴ The Commission determined that the carrier had not been conducting the requisite substantial, bona fide, interstate service over the same route on which it was conducting the involved intrastate service. The Commission also denied an application for authority to transport passengers in interstate or foreign commerce and in intrastate commerce over specified routes within Texas.⁵ The applicant had failed to demonstrate that it proposed to conduct a bona fide operation in either interstate or foreign commerce, and, consequently, no jurisdictional basis remained for granting intrastate authority.

The Commission, through an order by the Director of the Office of Proceedings, denied the National Limousine Association's petition for a declaratory order that certain licensing and inspection regulations of the New York City Taxicab and Limousine Commission imposed an undue burden on interstate

commerce.⁶ The Commission determined that the challenged ordinance appeared to reflect an exercise of the city's general police powers to protect the safety of its citizens. The Commission also noted that, even though the ordinance involved a form of licensing, it did not appear to interfere with the Commission's statutory licensing authority.

The Commission issued a series of decisions⁷ considering a passenger carrier's petition to reopen the proceeding in which the Commission had approved the purchase by GLI Acquisition Company (Greyhound) of the operating assets of Trailways Lines, Inc., and its stock interest in Continental Panhandle Lines, Inc.⁸ Bremerton Tacoma Stages, Inc., contended that Greyhound had engaged in destructive competitive practices by improperly terminating terminal access agreements with the carrier. The Commission found that the primary dispute between Greyhound and Bremerton concerned the level of rent Greyhound was demanding, and the Commission determined that Greyhound's demonstrated costs and revenues at the relevant terminals were reasonably commensurate with the ratios it had applied in setting new rental terms. The Commission found that Greyhound had exercised valid contract rights to terminate the access agreements and that the new access terms were not improper.

³ No. MC-C-30186, *National Limousine Association—Petition for Declaratory Order* (not printed), served March 25, 1992.

⁴ No. MC-F-18505, *GLI Acquisition Company—Purchase—Trailways Lines, Inc.; GLI Acquisition Company—Control—Continental Panhandle Lines, Inc.; [Bremerton Tacoma Stages, Inc., d/b/a Cascade Trailways—Petition to Reopen]* (decisions not printed), served July 17, July 24, August 4, and August 14, 1992.

⁵ *GLI Acquisition Company—Purchase—Trailways Lines, Inc., et al.*, 4 I.C.C.2d 591 (1988), affirmed (in a decision not printed), served October 6, 1988, *aff'd sub nom., Peter Pan Bus Lines, Inc., et al. v. Interstate Commerce Commission*, Nos. 88-1556 and 88-1567 (D.C. Cir. May 8, 1989) (*per curiam*).

³ *Adirondack Transit Lines, Inc.—Adirondack Trailways*, 8 I.C.C.2d 330 (1992).

⁴ *Boulder Airport, Inc. v. Stapleton Stagecoach Co.*, 8 I.C.C.2d 553 (1992).

⁵ No. MC-248899, *Alejandro R. Guzman, d/b/a Border Fast Transit Company—Regular-Route Common Carrier of Passengers Application* (not printed), served July 10, 1992.

Only a single petition was filed in the exit area⁹ during the fiscal year. The New Hampshire Public Utilities Commission (NHPUC) had denied a carrier's request to discontinue service over a route in New Hampshire. The NHPUC did not file an objection to the carrier's petition before the Commission, and the Commission therefore granted the unopposed request to discontinue interstate and intrastate operations over the route in question.¹⁰

Rates

During the year, only a single carrier initiated a proceeding under the Commission's procedures¹¹ for preempting State rate jurisdiction and authorizing intrastate rate increases in situations in which a State had denied, or failed to consider a request for, such increases. Peter Pan Bus Lines, Inc., petitioned for review of a decision of the Massachusetts Department of Public Utilities (MDPU) that had disallowed its request to increase intrastate passenger fares.¹² The MDPU did not reply to the petition. The Commission authorized the proposed fare increase after finding that Peter Pan had shown that its intrastate passenger fares were significantly lower than its current interstate fares for comparable services within the State.

Service

The Commission adopted¹³ a revised regulation¹⁴ to reflect the enact-

ment of the Americans with Disabilities Act (ADA).¹⁵ The Commission's former rules were rendered obsolete by the requirements of the ADA, which specifically delegated relevant jurisdiction to other agencies. The Commission's revised rule embraces a cross-reference to the ADA and the implementing regulations issued by the U.S. Departments of Justice and Transportation. The Commission did not adopt a proposed rule modifying the provisions for waivers of fares for attendants and service animals accompanying passengers with disabilities. While it encouraged carrier actions consistent with the spirit of ADA, the Commission noted that the law does not require rate and other concessions to facilitate travel by the disabled.

The National Bus Traffic Association, Inc. (NBTA), petitioned the Commission to institute a rulemaking proceeding to revise the list of articles that motor carriers of passengers may refuse to accept as checked baggage.¹⁶ The Commission denied the request because the present rule¹⁷ allows carriers to refuse to accept articles whose transportation is prohibited by law, and it advised NBTA to petition the DOT, if necessary, for an amendment of regulations defining hazardous materials. Also, the Commission noted that the current regulations do not contemplate that relief be conferred through formal amendments, and advised NBTA that, if it could provide specific explanations as to why relief is required, the Commission could reopen the proceeding and determine whether exemptions covering any specified articles should be granted.

In fiscal year 1992, 246 complaints were received by the Commission from

⁹ 49 U.S.C. 10935, enacted in Section 16 of the Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261.

¹⁰ No. MC-116140 (Sub-No. 19), *Concord Coach Lines, Inc., d/b/a Concord Trailways Exit Petition—New Hampshire* (not printed), served May 6, 1992.

¹¹ See 49 CFR 1143.

¹² No. MC-C-30203, *Peter Pan Bus Lines, Inc.—Petition for Review—Massachusetts Intrastate Rates* (not printed), served August 25, 1992.

¹³ Special Transp. Arrangements for Pass. with Disabilities, 6 I.C.C.2d 708 (1992).

¹⁴ 49 CFR 1063.8.

¹⁵ Pub. L. No. 101-336.

¹⁶ Ex Parte No. MC-95 (Sub-No. 6), *Practices of Motor Common Carriers of Passengers—Checked Baggage Prohibitions and Liability Exemptions* (not printed), served November 25, 1991.

¹⁷ 49 CFR 1063.4.

passengers utilizing intercity passenger service. These figures represent a 6 percent decrease from the number of similar complaints (262) received during fiscal year 1991. The majority of the complaints involved failure to provide scheduled service; delays in providing service in accordance with published operating schedules; service provided by unauthorized carriers; and occasional in-transit service failures, such as equipment breakdowns.

Twenty-four of the complaints received involved overcharges in connection with rates or charges published in tariffs governing carrier assessments for services provided, and 44 complaints involved dissatisfaction with the carrier's handling and processing of claims.

The Commission continued its program of passenger carrier inspections at tourist attractions and recreational centers to determine compliance with the ICC's insurance and licensing regulations. This program consisted of 20 road checks and resulted in the inspection of 168 passenger vehicles. Most instances of non-compliance discovered were corrected by voluntary dis-

continuance of service by carriers until operating authority was secured and evidence of insurance was filed with the Commission. In some instances, non-compliance with insurance regulations required enforcement actions which resulted in nine consent agreements, and seven civil injunctions. Enforcement action against motor passenger carriers for violations other than insurance resulted in three civil injunctions and three civil forfeiture actions. The Commission continued its special project on passenger bus terminal inspections to determine the adequacy of service provided to the public. The Commission also conducted ten compliance surveys of passenger carriers.

In response to unauthorized transportation of passengers by van between various points in the United States and Mexico, the Commission initiated a program to educate passengers that may be using these types of operations. Two hundred fifteen letters were sent to various news' organizations providing information on the rules and regulations regarding the transportation of passengers.

FREIGHT FORWARDERS, WATER CARRIERS, PROPERTY BROKERS, AND PIPELINES

Household Goods Freight Forwarders

The Commission retains jurisdiction over the household goods freight forwarding industry and continues to license household goods freight forwarders. The Commission did not issue any decisions significantly affecting their operations during the year.

Water Carriers

The Commission's jurisdiction over water carriers is limited because the majority of water carrier operations are either exempt from Commission regulation by statute or subject to the jurisdiction of the Federal Maritime Commission (FMC). In general, the Commission regulates the interstate transportation of non-bulk commodities and passengers, other than in ferry service. The Commission continued to license water carriers during fiscal year 1992, but the ICC did not issue any decisions materially affecting water carriers or reflecting new or changed policies regarding regulation of their operations.

Early in the fiscal year, the Commission and the FMC issued a joint policy statement establishing procedures to be followed by carriers operating in the domestic offshore trades and clarifying which agency has jurisdiction over certain transportation services.¹ (See the "Intermodal Transportation" Chapter for further discussion of the policy statement.)

Property Brokers

The Commission continued to license property brokers during the fiscal year. The Commission did not issue any decisions materially affecting property brokers or reflecting new or changed policies regarding regulation of their operations.

The Commission considered a petition² by a party seeking a waiver of the anti-rebating regulation.³ The petitioner, which provided transportation services and facilities for movements of property owned by its managing general partner, wanted to receive allowances on movements arranged by a property broker working with it. The Commission could not grant a specific waiver of the regulation because the petitioner had not provided a description of its proposed services or facilities. However, the Commission advised that bona fide allowances furnished by a broker for goods or services provided by a shipper are not considered rebates violative of the anti-rebating regulation.

Pipelines

The Commission retains jurisdiction over pipeline transportation of non-energy related commodities. In its first maximum rate reasonableness case in this area in years, involving Chevron Pipe Line Company's transportation of phosphate by slurry pipeline, the Commission determined the most appropriate methodology to judge the involved rates. The Commission will apply a hybrid model valuing the investment base at its original cost, and using the pipeline's parent company's capital structure and cost of capital, and a basic discounted cash flow model.⁴ The Commission rejected application of differential pricing in its analysis, and affirmed this result on appeal.⁵ The Commission reaffirmed that it is not bound by decisions of the Fed-

¹ No. MC-C-30193, *Pure Beverage Partners—Petition for Waiver* (not printed), served January 2, 1992.

² See 49 CFR 1045.9(b).

³ Docket No. 40131 (Sub-No. 1), *Ashley Creek Phosphate Company v. Chevron Pipe Line Company, et al.* (not printed), served March 30, 1992.

⁴ Docket No. 40131 (Sub-No. 1), *Ashley Creek Phosphate Company v. Chevron Pipe Line Company, et al.* (not printed), served September 22, 1992.

⁵ Joint ICC/FMC Policy Statement, 8 I.C.C.2d 243 (1991).

eral Energy Regulatory Commission concerning oil pipelines and rejected defendants' contention that Commission action in this complaint is constrained by pending antitrust litigation.⁶ Complainant's request that assignment of the case to an administrative law judge be rescinded was granted in part. The Commission's Office of Hearings will complete the construction of the record, and the Commission will issue an initial decision on the merits. Subsequently, complainants alleged that Chevron sold the involved pipeline, and filed a new complaint against the owners alleging the tariff publication of unlawful rates and requested that the two complaint cases be considered separately.⁷ Both cases were pending at the close of the fiscal year.

In another pipeline rate complaint case, involving the movement of anhydrous ammonia,⁸ the Commission 1) denied defendants' interlocutory appeal from an administrative law judge's refusal to allow them to depose two former employees to determine if privileged information had been disclosed, and 2) denied a requested protective order to prevent complainant from communicating with the two former employees without the prior consent or presence of defendants' counsel.⁹ At the close of the fiscal year, discovery had been completed and a procedural schedule for the submission of evidence was under consideration by an Administrative Law Judge.

⁶ *Ashley Creek*, *supra*, (not printed), served March 30, 1992.

⁷ Docket No. 40810, *Ashley Creek Phosphate Company v. FS Industries, et al.* (not printed), served June 16, 1992.

⁸ In March, 1990, the Federal Energy Regulatory Commission dismissed a complaint concerning anhydrous ammonia moving by pipeline for lack of jurisdiction.

⁹ Docket No. 40411, *Farmland Industries, Inc. v. Gulf Central Pipeline Company, et al.* (not printed), served July 9, 1992.

INTERMODAL TRANSPORTATION

In a major interagency initiative, the Commission and the Federal Maritime Commission (FMC) jointly issued a policy statement establishing procedures to be followed by carriers operating in the domestic offshore trade.¹ The agencies acted to provide a consistent and predictable regulatory approach for motor movements by ICC-regulated carriers that are confined to FMC-regulated carriers' waterside port terminals. The agencies agreed that, as a general rule, "inside-the-terminal-fence" motor movements would be regarded as part of ordinary all-water movements regulated by the FMC. Conversely, motor carrier operations "outside-the-terminal-fence" would be presumed to be trucking services that can be components of ICC-regulated joint motor-water movements, unless the motor movements are performed on behalf of ocean carriers as part of pickup and delivery services and are included in the ocean carriers' tariffs.

The Commission has also initiated an inquiry into the division of regulatory authority between the ICC and the FMC over traffic moving in the domestic offshore trade.² The FMC regulates the rates and practices of ocean carriers providing all-water service between mainland and domestic offshore ports, and the ICC regulates joint-rate, through-route transportation between interior mainland points and domestic offshore ports provided by ocean carriers in conjunction with trucking companies or railroads.

The Commission decided that it would no longer retain international

joint ocean-motor through-rate tariffs that are filed both with the ICC and FMC.³ The Commission will continue to review tariffs at the time they are filed and to make them available for initial public comment. After the tariffs become effective, however, they will be on file with the FMC only.

CSX Intermodal, Inc. (CSXI), a motor carrier subsidiary of CSX Transportation, Inc. (CSXT), a rail carrier, CMX Trucking, Inc., and CSXI SUB, a wholly-owned noncarrier subsidiary of CSXI, were granted an exemption to merge CMX into CSXI SUB and the continued control of CSXI SUB by CSXI.⁴ CSXI and CSXT are wholly-owned subsidiaries of CSX Corporation, a non-carrier. These transactions will not affect the CSX motor carrier subsidiaries' services, but will make them more efficient and economical.

American Commercial Lines, Inc. (ACL) was granted an exemption from the Panama Canal Act⁵ for the purchase and lease by its subsidiary, American Commercial Barge Line Company (ACBL), of certain assets of Hines, Inc. (Hines), a water carrier exempt from regulation under 49 U.S.C. 10542(c).⁶ The Commission had jurisdiction over this matter because ACL and ACBL are controlled by a holding company that also owns a railroad, CSXT. The Commission found that the purchase and lease transaction would not result in any lessening of water competition and that CSXT would not be able to harm the current competitive situation among water carri-

¹ *Retention of Joint Ocean-Motor Through-Rate Tariffs*, 8 I.C.C.2d 621 (1992).

² Finance Docket No. 31949, *CMX Trucking, Inc.—Merger and Continuance in Control Exemption—CSXI SUB* (not printed), served November 18, 1991, 49 U.S.C. 11321.

³ Finance Docket No. 31952, *American Commercial Lines, Inc.—Purchase and Lease Exemption—Certain Assets of Hines, Inc.* (not printed), served November 7, 1991.

¹ *Joint ICC/FMC Policy Statement*, 8 I.C.C.2d 243 (1991).

² No. MC-247354 (C) and (P), *Trailer Bridge, Inc., Common and Contract Carrier Application*, and No. 40783, *Marine Transportation Services Sea Barge Group, Inc. v. Trailer Bridge, Inc.* (not printed), served September 15, 1992.

ers. The Commission also authorized CSX and ACL to acquire the operating properties of water carriers — The Valley Line Company and Valley Transportation,

Inc. — from Sequa Corporation.⁷ After an extensive evaluation of the competitive impacts of the transaction, the Commission found no anti-competitive effects.

⁷ Finance Docket No. 31979, *CSX Corporation and American Commercial Lines, Inc.—Control and Merger—American Valley Line, Inc.* (decisions not printed), served June 12 and 19, 1992.

ENERGY AND ENVIRONMENT

Energy and environmental issues are addressed by the Section of Energy and Environment (SEE) within the Commission's Office of Economics. SEE fulfills its responsibilities primarily through its independent environmental review of cases, which includes preparation of environmental impact statements and environmental assessments, and advice to the Commission on environmental matters in its decision-making. During fiscal year 1992, SEE prepared over 300 environmental documents for cases that included railroad abandonments, acquisitions, and constructions.

In conducting its environmental review, SEE examines the impact of proposed actions on the environment and recommends conditions to mitigate environmental impacts. SEE considers the requirements of the National Environmental Policy Act (NEPA),¹ the National Historic Preservation Act (NHPA),² the Endangered Species Act,³ the Coastal Zone Management Act,⁴ the Energy Policy and Conservation Act (EPCA),⁵ the Clean Water Act,⁶ and other pertinent environmental statutes. SEE works closely with various Federal, State, and local agencies and concerned parties to ensure that the environmental impact of proposed actions are fully considered and effective mitigation is imposed. Conditions imposed by the Commission in the past fiscal year typically have pertained to wetlands and other water resources, threatened or endangered species, public safety and land use, and protection of historic resources.

New Environmental Rules

Fiscal year 1992 marked the first year in which SEE conducted its independent environmental review of cases under the Commission's new environmental rules.⁷ These rules, which became effective September 29, 1991, strike a reasonable balance between the Commission's statutory directives and the various environmental laws with which the agency must comply. The new rules comprehensively update the Commission's environmental review process to provide a more practical and streamlined framework for the consideration of environmental issues in the Commission's decision-making process. Major improvements under the new rules include (1) a better allocation of Commission resources to those proceedings that have greater potential for environmental impacts; (2) clarification of those classes of actions generally exempted from environmental review; (3) revision and clarification of the information requirements for environmental and historic reports; (4) broader and earlier distribution of information to various Federal, State, and local agencies to expedite the processing of cases; and (5) greater opportunity for general public notice and participation in the Commission's environmental review process. In sum, the new rules permit quicker identification and resolution of environmental concerns; more meaningful input from appropriate governmental agencies, the transportation industry, and the general public; and the development of effective mitigation to address environmental impacts.

To facilitate implementation of the new environmental rules and the public's understanding of these new procedures, SEE issued a public service

¹ 42 U.S.C. 4331-4335, and see 40 CFR Part 1500.

² 16 U.S.C. 470 *et seq.*, and see 36 CFR 800.

³ 16 U.S.C. 1531-1542. Also see the implementing regulations of U.S. Fish and Wildlife Service and National Marine Fisheries Service, 50 CFR 402.

⁴ 16 U.S.C. 1451 *et seq.*, and see 15 CFR Part 930.

⁵ 42 U.S.C. 6362(b).

⁶ 33 U.S.C. 1344, and see 33 CFR 323.1.

⁷ *Implementation of Environmental Laws*, 7 I.C.C. 2d 807 (1991).

guide in December 1991 entitled "Guide to the Interstate Commerce Commission's Environmental Rules." This guide, now in its second printing, sets forth a series of questions and answers that address key provisions of the new regulations.

Rail Line Constructions

Rail construction continued at an unprecedented level. In the past, the Commission normally processed an average of one construction case per year. This fiscal year, SEE examined over 20 rail construction proposals. Fourteen of these construction projects involved active environmental review while the other projects are at a preliminary consultation stage. The projects, located in various states throughout the country, vary in purpose, size, and complexity of environmental impact, though each proposal, even those at the preliminary stage, requires some level of environmental consultation and analysis. All these proposals, even at the preliminary stage, require some level of environmental consultation and analysis.

A continuing trend in the construction area is the large number of utilities seeking to construct rail lines to gain direct access or more competitive access to coal sources. Many of these utilities are continuing to pursue rail construction as a way to obtain low sulfur coal needed to meet the sulfur dioxide emission levels mandated by the 1990 Clean Air Act Amendments. Other purposes for rail constructions include more efficient operations, competitive service, better access to industrial facilities, and high-speed passenger service.

The Commission completed the environmental review process for a number of rail construction cases. One case involved the construction of a rail line to provide competitive rail service to an electric generation plant in West Jefferson, AL. In this case, SEE recommended final conditions to protect

water and air quality, wildlife habitat, vegetation control, and safety. SEE also recommended consultation between the railroad and appropriate Federal, State, and local authorities.⁸ The environmental review process was also completed for a case in Presque Isle, ME,⁹ that involved a proposal to construct a 1.6 mile line to provide improved and safer service to an industrial park. The environmental document in this case included a number of recommendations to protect aquatic species, water resources, public safety, and other areas of the environment.

Careful environmental review is required regardless of the length of the proposed rail line; each case presents the potential for significant environmental impact. For example, SEE prepared an Environmental Impact Statement (EIS) for the Indiana and Ohio Railway Company proposal to construct a 2.9-mile rail line over an abandoned right-of-way in order to connect two separate line segments. Preparing the Final EIS for this proceeding required substantial independent analysis, full consideration of the comments received on the Draft EIS, and on-going consultations with numerous Federal, State and local agencies, as well as concerned parties. The Final EIS concluded that the proposal could create significant environmental impacts and recommended the "no-build" alternative to applicant's proposed route.¹⁰ SEE fur-

⁸ Finance Docket No. 31972, *Southern Electric Railroad Company—Construction—Plant Miller to Burlington Northern Railroad near West Jefferson, Alabama* (not printed), environmental assessment served July 31, 1992.

⁹ Finance Docket No. 32030, *Aroostook Valley Railroad Company—Construction Exemption—Presque Isle, Maine* (not printed), environmental assessment served May 18, 1992.

¹⁰ Finance Docket No. 31320, *Indiana & Ohio Railway Company—Construction and Operation of a Line of Railroad—In Butler, Warren, and Hamilton, Ohio* (not printed), final EIS served April 30, 1992.

ther recommended various mitigation measures protecting public safety, water resources, and vegetation control that should be imposed if the Commission decided to approve the proposed construction.

Another major construction case is the Tongue River Railroad's proposed 42-mile extension of an already authorized 89-mile line to access low-sulfur coal in southeastern Montana. This fiscal year, SEE completed the Draft EIS for this project, which involves substantive environmental concerns.¹¹ These concerns include impacts on Native Americans, particularly the Northern Cheyenne, protected plant and animal species, and water quality. In the Draft EIS, SEE preliminarily recommended an alternate route to applicant's proposed route. Also, SEE discussed the potentially adverse environmental impacts and possible mitigation measures associated with both applicant's proposed route and the alternate route. SEE is in the process of evaluating written comments from the public on the Draft EIS as well as the comments presented in public hearings held in Montana and Wyoming in late August. SEE will carefully consider all comments in preparing the Final EIS and making its final recommendations to the Commission.

SEE continues to participate as a co-operating agency in two EIS's being prepared by other government agencies for projects involving rail construction. In one of the projects, the Department of Interior's Office of Surface Mining, Reclamation and Enforcement and the Montana Department of State Lands are jointly preparing a Draft EIS that examines the environmental concerns connected with a

proposed coal mining permit and associated rail construction by the Meridian Minerals Company in the Bull Mountain area near Roundup, MT. The proposal is for the construction of approximately 35 miles of rail line to afford access to the proposed mine. In the second project, a preliminary Draft EIS is being jointly prepared by the U.S. Department of Transportation's Federal Highway Administration, the Texas Department of Transportation, and the City of Lubbock. The Draft EIS will examine the potential environmental impacts of the relocation of a 12 mile rail line to accommodate a highway project in Lubbock, TX.

During this past fiscal year, SEE conducted ten field survey/site inspections, numerous prefilng environmental consultations, and briefings for several new construction projects. Also, SEE has consulted with the Federal Railroad Administration, various State agencies, and technical consultants regarding high speed passenger service proposals and the possible upgrading of the Alameda Rail Corridor to facilitate rail service to the ports of Los Angeles and Long Beach, CA.

Since rail line construction is the type of Commission licensed activity that has the most potential for environmental impact, considerable staff resources have been devoted to analysis of these activities. Informal consultations with parties planning to construct rail lines indicate that the trend toward increasing construction activity will continue.

Other Finance Transactions and Rulemakings

SEE examined approximately 170 railroad finance transactions during the fiscal year. These proceedings involved rail line acquisitions, lease and operations, and trackage rights.

A major improvement in this area of environmental review was brought about by the revision of the Commission's environmental rules. Under the revised

¹¹ Finance Docket No. 30186 (Sub-No. 2), *Tongue River Railroad Company—Construction and Operation of Additional Rail Line—From Ashland To Decker in Rosebud and Big Horn Counties, MT* (not printed), draft EIS served July 17, 1992.

rules, certain types of finance docket proceedings whose environmental effects are ordinarily insignificant are exempted from environmental review. This classification of actions has allowed SEE to concentrate its resources on those proceedings that have greater potential to affect the environment.

SEE has also provided input on rulemakings with potential environmental concerns. One such rulemaking concerned class exemptions for the construction of short segments of connecting track and for all other rail constructions.¹² Public comment is currently being sought.

Rail Line Abandonments

SEE conducted environmental review for over 100 abandonments during the fiscal year. In approximately 40 abandonments, the Commission imposed conditions related to the salvage of rail properties, as recommended by SEE. In approximately 25 of these cases, the Commission consulted with the U.S. Army Corps of Engineers, U.S. Coast Guard, and State or local authorities to determine any necessary measures to mitigate impacts on water resources, including wetlands.

SEE routinely consulted with the U.S. Fish and Wildlife Service and State officials regarding the potential impact of Commission approved actions on endangered or threatened species. During the past fiscal year, SEE recommended and the Commission imposed 14 conditions designed to protect wildlife. These conditions usually imposed limitations on salvage activities or required consultation with the appropriate Federal or State agency prior to salvage. Limitations on salvage activi-

ties included restricting salvage to certain times of the year when species of concern are not present or breeding in the area, and limiting salvage to the right-of-way to prevent disturbing nearby wildlife habitat.

Public concern over Commission proceedings involving hazardous materials and waste sites has continued to increase. SEE reviewed several cases involving hazardous materials/sites. In one case which involved approximately 71 miles of rail line, a portion of the right-of-way is actually located within a Superfund site.¹³ Serious environmental issues emerged in the course of SEE's review concerning possible impacts on human health and safety, and on Federally-protected endangered species. The analysis of these issues required SEE to conduct a more extensive investigation, and to consult further with Federal and State agencies. In several other cases, the potential or actual existence of hazardous waste or sites within the right-of-way was identified, and SEE recommended remedial measures. To better address increasing concerns in this area, the Commission's environmental rules now require carriers to include in their environmental reports detailed information concerning hazardous materials and waste sites. The rules also specifically require environmental documentation for water carrier licensing involving the transportation of hazardous materials.

Historic Review Process

Historic resources conditions were imposed in approximately 30 cases to protect historic sites and structures. The number of historic preservation conditions imposed this past fiscal year

¹² Ex Parte No. 392 (Sub-No. 2), *Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, and Ex Parte No. 392 (Sub-No. 3), *Class Exemption for Rail Construction Under 49 U.S.C. 10901* (not printed), served September 15, 1992.

¹³ Docket No. AB-33 (Sub-No. 70), *Union Pacific Railroad Company—Abandonment—Between Plummer and Mullan in Benewah, Kootenai, and Shoshone Counties, Idaho* (not printed), served September 21, 1991.

reflects revisions in the environmental rules. These revisions, which were arrived at in consultation with the Advisory Council on Historic Preservation, set forth more specific and complete informational requirements to facilitate the identification of historic properties,¹⁴ and exempt from historic review those actions that rarely affect historic properties. This has allowed for more expeditious and complete identification of any affected historic resources.

Many historic resources conditions imposed required the railroad to retain its interest in and refrain from altering any potentially historic sites or structures until completion of the historic review process required by the National Historic Preservation Act.¹⁵ Based on extensive consultations with appropriate historic officials, SEE has worked toward expediting the identification of historic properties, assessing whether the proposed actions adversely affect these properties, and determining how to best mitigate any adverse impacts.

In instances where all parties agree on appropriate mitigation, a memorandum of agreement (MOA) is signed by all the parties and transmitted to the Advisory Council on Historic Preservation for its approval. The successful completion of an MOA is a substantial undertaking, involving extensive and lengthy negotiations with all the parties. Once an MOA is executed, the railroad can then fully exercise its abandonment authority. SEE has made progress in this area as it has completed or engaged in negotiations for approximately 15 MOA's.

The provisions of the MOA's varied depending on the nature of the historic resource(s) and the circumstances surrounding the proceeding. In several abandonment cases, the MOA's provided for the railroad to supplement ex-

isting archival information, such as blueprints and drawings or histories of the line or resource, with current photographs to establish an historic source materials package to preserve the resource for current and future generations. Other MOA provisions have required railroads to document historic structures, such as bridges and depots, to the level of recordation set by the National Park Service. In one case, the Commission and the involved parties finalized an MOA that provided for an ore dock and approach trestle in Michigan to be recorded to Historic American Engineering Record standards.¹⁶ Another MOA stipulates that an historic rail right-of-way be preserved through an interpretive marker describing the line's historic significance.¹⁷ This marker is designed to be portable so that it may be moved between the public library, schools, and historic institutions in the community for the education and enjoyment of as many people as possible.

In several cases, SEE has been able, without an MOA, to reach agreement with the railroads, historic preservation officials, and trail groups regarding preservation of historic rights-of-way and structures through conversion of the right-of-way into a trail.¹⁸ SEE will continue to explore creative ways to accomplish the statutory objectives of the Commission and other agencies.

¹⁴ Docket No. AB-303 (Sub-No. 5X), *Wisconsin Central Ltd.—Abandonment Exemption—in Marquette County, MI* (not printed), served April 24, 1992.

¹⁵ Docket No. AB-6 (Sub-No. 311X), *Burlington Northern Railroad Company Abandonment Between Lewistown and Heath, in Fergus County, Montana* (not printed), served December 13, 1991.

¹⁶ Docket No. AB-6 (Sub-No. 334X), *Burlington Northern Railroad Company—Exemption—Abandonment Between Estillene and Plainview, Texas* (not printed), served August 12, 1992, and Docket No. AB-55 (Sub-No. 234X), *CSX Transportation, Inc.—Abandonment Exemption—Cobb, Paulding, and Polk Counties, Georgia* (not printed), served July 31, 1992.

¹⁴ See 49 CFR 1105.8(d).

¹⁵ 16 U.S.C. 470 et seq.

In instances where the Advisory Council on Historic Preservation does not approve an MOA or no agreement can be reached, the Commission affords the Advisory Council an opportunity to comment on the action's effect on historic resources. The Commission must then consider the Advisory Council's comments in reaching its decision.

The historic review required by Section 106 of the National Historic Preservation Act is a multi-step and time-consuming process that is not always compatible with the expedited time frames applicable to many Commission proceedings. The identification of historic properties had been the biggest hurdle faced by the Commission in completing this process. SEE has consulted with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and other appropriate interests to develop a workable approach toward the consideration of historic preservation in Commission proceedings. This cooperative effort is now incorporated in the Commission's environmental rules, which have improved and expedited the historic review process.¹⁹ The rules also reflect the Commission's statutorily limited role in the protection of historic property. The Commission will continue to work

closely with historic preservation officials to protect historic properties subject to its jurisdiction.

Public Assistance

SEE responded to numerous public inquiries regarding transportation environmental concerns, the Commission's environmental review process, the Commission's new environmental rules, and numerous questions concerning rail construction projects and abandonments. As discussed above, SEE issued a publication entitled "Guide to the ICC's Environmental Rules." Additionally, SEE conducted on-going consultations with Federal, State, and local agencies to ensure that appropriate mitigation was recommended to protect the human environment. With respect to trails and public use, SEE includes in all its environmental documents for abandonment cases a discussion of the trails/public use procedures and the potential suitability of the property for public use. In addition, in each abandonment exemption case, prior to filing its notice of exemption with the Commission, the railroad must publish in the newspaper in each county in which the line is located, notice of the abandonment, possible trails or public use alternatives, and how to participate in the Commission proceeding.²⁰

¹⁹ See 49 CFR 1105.8(d).

²⁰ 49 CFR 1105.12.

TARIFFS AND RAIL CONTRACTS

The nearly 1.4 million common carrier freight tariff filings of fiscal year 1992 reflect a slight increase over the nearly 1.3 million tariff filings in fiscal year 1991. For several years freight tariff filings have been relatively stable, indicating that intense competition continues throughout the transportation industry.

Motor carrier freight tariff filings remained fairly constant at slightly over one million, while rail freight tariff filings increased from less than 100,000 to 116,000. International ocean/land intermodal freight tariff filings decreased from 76,000 to 57,000, and water carrier freight tariff filings increased from 37,000 to over 56,000.

Motor carrier passenger tariff filings increased to 3,500 from the previous year's filings of 2,300. No rail or water passenger tariff filings were received in 1992.

The 38,000 new rail contract filings of 1992 reflect a modest increase over the 37,000 contract filings of 1991, and indicate that rail contract pricing continues to be an attractive alternative to tariff pricing.¹

The Commission began an effort to modernize its tariff library. The Commission considered a variety of alternatives and is currently evaluating the feasibility of an electronic imaging system for filed tariffs. Imaging technology would allow the public greater access to tariff information, reduce storage costs and improve the security of the library.

With the finalization of one "show cause" proceeding in 1992,² and the ini-

tiation of two others,³ the Commission continues to review the sufficiency of rate disclosure in motor carrier "range" tariffs. The potential failing of such tariffs is that tariff users may not be able to determine the actual rate or charge for any given shipment of goods, thereby depriving competing carriers and shippers of accurate price information.

Informal Rate Cases

The Commission's Office of Tariffs used its informal procedures to settle 7,713 cases concerning disputes over rate and tariff matters during fiscal year 1992. This informal and inexpensive process permitted the settlement of many tariff disputes without the need to institute time-consuming and costly formal procedures. Several hundred of the disputes involved freight bill claims by auditors and collection agencies for alleged improperly underpaid freight bills of bankrupt motor carriers and freight forwarders. The Office of Tariffs was successful in showing that many of the claims were not properly supported and, consequently many, improper claims against shippers and receivers of freight were withdrawn.

Any party, from a large corporation to an individual consumer, has the opportunity to utilize the informal rate settlement process and to receive the same expert assistance that is provided by staff to the Commission in formal rate and tariff matters. The informal settlement process allows for the dissemination of pertinent law, tariff information, and the rights of parties in order to prevent the future occurrence of similar disputes.

For example, through the Commission's informal complaint proceedings, a rail and/or water shipper may prevent ex-

¹The Commission exempted carriers from the requirement to file contracts for other than agricultural commodities which significantly reduces the contract filing burden imposed on rail carriers. The action was taken in Ex Parte No. 387 (Sub-No. 964), *Railroad Transportation Contracts* (not printed), served September 3, 1992.

²Docket No. 40641, *Morgan Drive Away, Inc. (ICC MODA 442)—Show Cause Proceeding* (not printed), served June 12, 1992.

³Docket No. 40843, *Tariffs of Certain Motor Common Carriers Containing "Ranges of Rates"—Show Cause Proceeding* (not printed), served August 20, 1992, and Docket No. 40848, *Tariffs of Certain Motor Common Carriers Containing "Ranges of Discounts"—Show Cause Proceeding* (not printed), served September 8, 1992.

piration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and describing their complaints. If the carrier in question agrees that a particular movement involves overcharges or that the charges are unreasonable, refunds or waivers can be made without the need for formal procedures.

The Commission's special docket procedure permits rail and water carriers to seek authority to refund or waive the collection of admittedly unreasonable charges. Eight hundred and fifty-nine special docket cases were processed authorizing reparations and waivers amounting to over \$4,500,000.

Suspension/Special Permission Board

The Suspension/Special Permission Board is comprised of Commission employees that act initially for the Commission on matters involving surface carrier tariffs and railroad contract discovery petitions.

Matters of suspension involve new or revised rates, charges, or rule provisions that are filed with the Commission in tariff form for the interstate transportation services provided by the Nation's rail, motor, and domestic water carriers. Upon request of interested or affected parties, or on its own motion, proposed tariff changes are considered for possible investigation and/or suspension by the Suspension/Special Permission Board or by the entire Commission. Decisions of the Board are subject to review by the Commission.

During fiscal year 1992, the Suspension/Special Permission Board reviewed 40 tariff proposals. Of these, 27 were protested by 122 interested parties, nine were not protested but were considered upon the Board's own motion, and four were petitions for reconsideration of initial Commission decisions. No petitions for railroad contract discovery were filed.

Five tariff proposals were suspended; two were permitted to become

effective but placed under investigation; 19 were permitted to become effective without investigation; five were canceled prior to the scheduled effective date; and the protest against one was withdrawn and the case was discontinued. The four petitions for reconsideration of initial Commission decisions were denied.⁴

Included in the total were nine general increase proposals of motor common carrier rates and charges filed by regional motor carrier bureaus,⁵ and one general increase and a major restructuring of rates and charges applicable to household goods shipments filed by the Household Goods Carriers' Bureau, Inc.

Special permission matters involve applications requesting relief from the Commission's tariff publishing and rail contract filing regulations. During fiscal year 1992, 64 applications were considered. Of this total, 54 pertained to tariff filing regulations⁶ and ten pertained to rail contract filing regulations.⁷

Sixty applications were granted in whole or in part; one was denied; one was returned to the applicant as unnecessary, and two previous grants were revoked.

⁴ No. 40679, *Charge For "Order Of" Bills of Lading, Burlington Northern RR* (not printed), served February 7, 1992; I&S Docket No. M-30426, *Honoring Tickets For Passenger Change of Routing or Destination, Greyhound Lines, Inc.* (not printed), served March 24, 1992; I&S Docket No. M-30426 (Sub-No. 1), *Joint Route Fare Restrictions, Greyhound Lines, Inc.* (not printed), served March 24, 1992; and Suspension Case No. 71574, *Cancellation of Joint Rates and Routes on Kaolin Clay, Norfolk Southern* (not printed), served March 17, 1992.

⁵ Eastern Central Motor Carriers Association, Inc.; Central States Motor Freight Bureau, Inc.; Middle Atlantic Conference; Midwest Motor Freight Bureau; The New England Motor Rate Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Pacific Inland Tariff Bureau, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; and Southern Motor Carriers Rate Conference, Inc.

⁶ 49 CFR §1312 (motor) and §1314 (rail).

⁷ 49 CFR §1313 (railroad contracts).

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting and reporting, financial analysis, cost analysis, cost development, and auditing. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules; the examination and analysis of accounts and financial statements; the analysis of cost and financial evidence submitted by parties to proceedings before the Commission; and the compilation and publication of transportation statistics and cost studies.

Accounting and Reporting

The Commission reduced the recordkeeping burden for railroads by adopting new rail classification regulations for Class I, Class II and Class III railroads. The threshold for Class I status was raised from \$50 million (1978 dollars) to \$250 million (1991 dollars); Class II from \$10-\$50 million (1978 dollars) to \$20-\$250 million (1991 dollars); and Class III from \$10 million or less (1978 dollars) to \$20 million or less (1991 dollars). The effect of this change is to subject only the largest railroads to Commission reporting requirements.¹

The Commission also concluded a survey of non-reporting motor carriers of property and passengers. The purpose of the survey was to identify those carriers that have increased their annual operating revenues above the levels that would require them to file annual and quarterly financial reports with the Commission.

The Commission also reduced motor carrier reporting by granting the United Parcel Service carriers (UPS) a partial waiver from filing consolidated annual data on annual report Form M (Form M). Although UPS will continue to

file "respondent only" data on Form M, the Commission allowed them to substitute SEC Form 10-K consolidated information instead of the consolidated information required by Schedules 100 and 300 of Form M. The Commission also agreed to accept SEC quarterly report Form 10-Q in place of quarterly Form QFR. The form 10-K contains more detailed information and is more appropriate for the Commission's use since the Commission's focus on UPS has been one of financial analysis rather than ratemaking.²

A significant initiative to reduce motor carrier accounting and reporting burdens was the proposal to eliminate the Uniform System of Accounts (USOA) (49 CFR 1207) as the prescribed accounting system. In lieu of the USOA, motor carriers would be allowed to use Generally Accepted Accounting Principles (GAAP) as the accounting basis. The proposal further sought to reduce reporting burdens by eliminating quarterly reporting by Class I motor carriers and all reporting by Class II motor carriers. Moreover, the threshold for Class I status would be raised from \$5 million (1978 dollars) to at least \$25 million (1993 dollars) or, alternatively, to \$50, \$75, or \$100 million. Lastly, the Commission invited comments on ways to simplify Form M.³ This proceeding was pending at the end of the year.

The Commission, as part of its continuing efforts to reduce regulatory burdens and eliminate unnecessary regulations, proposed to eliminate recordkeeping requirements for record-

¹ Docket No. 40595, *United Parcel Service, Inc. (UP) and United Parcel Service, Inc. (UPS) Request for Limited Waiver of 49 C.F.R. Part 1249* (not printed), served February 20, 1992.

² Ex Parte No. MC-206, *Revision to Accounting and Reporting Requirements for Motor Carriers of Property* (not printed), served July 27, 1992.

³ *Montana Rail Link, Inc. and Wisconsin Central Ltd., Joint Petition For Rulemaking with Respect to 49 CFR 1207, 81 C.F.R. 625 (1992).*

ing changes in railroad property values.⁴ The Commission issued this proposal in the belief that the more general instructions contained in 49 CFR 1201, the Uniform System of Accounts for Railroad Companies, provide sufficient guidelines to support the recording of accounting entries relative to rail property. This proposal was pending at the close of the fiscal year.

Cost and Financial Analysis

In a coal proceeding, the Commission dismissed the case on the grounds that complainant and defendant, CSX Transportation, Inc., had resolved all disputes relating to the consolidated proceeding and that the parties were entering into a contract.⁵

The Commission considered evidence in two non-coal proceedings involving bulk commodities. In one, rates on movements of wheat and barley from Montana to Pacific Northwest ports were at issue. The Commission's decision calculated reparations and interest through July 1, 1991, with the total amounting to approximately \$16,559,000.⁶ In the second proceeding, the Commission considered the amount of damages plus interest applicable to movements of spent nuclear fuel and related items. A final decision summarizing damages (1976 through 1988) and interest through

February 29, 1992, amounted to approximately \$9,990,000.⁷

The Commission analyzed cost and financial evidence submitted in connection with railroad applications to abandon selected line segments. Applicable revenues and avoidable costs for approximately 20 of these proceedings were analyzed during fiscal year 1992 to determine the avoidable loss (or gain) which would result from each abandonment.

The Commission considered cost and revenue evidence introduced by various railroads and several shipping entities on the reasonableness of rates charged for the transportation of non-ferrous recyclable commodities. In one proceeding, an Administrative Law Judge awarded the Departments of Energy and Defense damages amounting to approximately \$8,728,000 for the period 1978 through 1990.⁸ In the decision the Judge found spent nuclear fuel and related items to be non-ferrous recyclables commodities and applied recyclable commodity standards to determine damages. The Commission is presently considering appeals to the Judge's decision including the applicability of recyclable standards.

During the fiscal year, the Commission determined that one Class I railroad, Illinois Central Railroad Company, was revenue adequate for 1991.⁹ The Commission also found that, for the year 1991, the railroad industry's composite cost of capital rate was 11.6 percent.¹⁰

⁴ Ex Parte No. 512, *Uniform System of Records of Property Changes for Railroad Companies* (not printed), served August 26, 1992.

⁵ Docket No. 37063, *Increased Rates on Coal, L&N RR, October 31, 1978* and Docket No. 38025S, *The Dayton Power and Light Company v. Louisville and Nashville Railroad Company* (consolidated proceeding) (not printed), served December 26, 1991.

⁶ Docket No. 37809, *McCarty Farms, et al. v. Burlington Northern Inc.*, Docket No. 37809 (Sub-No. 1), *McCarty Farms, Inc. v. Burlington Northern Railroad Company*, and Docket No. 37815S, *Montana Dept. of Agriculture et al. v. Burlington Northern Inc.* (consolidated proceeding) (not printed), served November 26, 1991.

⁷ Docket No. 37076, *U.S. Department of Energy, Et Al. v. The Baltimore and Ohio Railroad Company, et al.* (not printed), served July 28, 1992.

⁸ Docket No. 39802S, *United States Department of Energy and the United States Department of Defense v. Baltimore & Ohio Railroad Company et al.* and Docket No. 38376S, *United States Department of Energy and the United States Department of Defense v. Aberdeen & Rockfish Railroad* (consolidated proceeding) (not printed), served February 12, 1992.

⁹ *Railroad Revenue Adequacy—1991 Determination*, 81 C.C.2d 666 (1992).

¹⁰ *Railroad Cost of Capital—1991*, 81 C.C.2d 402 (1992).

The Commission analyzed financial data contained in applications filed by motor carriers of property and passengers requesting approval to be self-insured for bodily injury and property damage claims and/or cargo claims. While performing these analyses, the Commission determined whether each applicant had the financial resources to fund its proposed self-insurance program and whether approval of a self-insurance plan, if warranted, should include conditions or restrictions to ensure the availability of sufficient resources to pay claims for statutory minimum coverage levels.

The Commission evaluated the financial condition of large transportation companies to determine if they were financially able to provide service. This included a comprehensive monitoring of Greyhound Lines, Inc., the Nation's only transcontinental motor carrier of passengers, which emerged from Chapter XI bankruptcy on October 31, 1991, and began operating in accordance with a reorganization plan approved by creditors. Greyhound had previously filed for Chapter XI bankruptcy on June 4, 1990.

Reports continued to be publicly released each quarter which presented the latest revenues, earnings, and traffic volume data of Class I railroads, 100 of the Nation's largest trucking companies, 15 of the largest household goods carriers, and ten of the largest bus companies.

Cost Development

The Commission analyzed comments for the first review of the Uniform Railroad Costing System (URCS).¹¹ Comments were requested on the econometric and statistical issues which underlie the URCS variability factors.

Under the procedural schedule, which was revised at the request of the parties, the Commission will issue a preliminary decision on February 1, 1993.

The Commission established revenue-to-variable cost (R/V/C) ratio caps for the transportation of non-ferrous recyclable commodities moving during 1991¹² and 1992.¹³ Along with establishing the R/V/C ratio caps for 1992 the Commission also conducted its first annual compliance monitoring.¹⁴ The compliance decision identified those non-ferrous recyclable commodity groups or individual rates that were not in compliance with the R/V/C ratio standards for the year. Commodity groups and individual rates not found in compliance were precluded from rate increases during 1992 without first being prejustified. In fiscal year 1992, the Commission proposed to exempt from regulation rail transportation of non-ferrous recyclable commodities that appear to recover revenues that are lower than the variable costs of the transportation.¹⁵

The Commission issued four quarterly Rail Cost Adjustment Factor (RCAF) decisions.¹⁶ Data for 1989 were

¹¹ Ex Parte No. 394 (Sub-No. 8), *Cost Ratio for Recyclables—1991 Determination* (not printed), served November 18, 1991.

¹² Ex Parte No. 394 (Sub-No. 9), *Cost Ratio for Recyclables—1992 Determination* (not printed), served November 27, 1991, revised December 6, 1991.

¹³ Ex Parte No. 394 (Sub-No. 9), *Cost Ratio for Recyclables 1992 Determination* (not printed), served May 6, 1992.

¹⁴ Ex Parte No. 394 (Sub-No. 10), *Railroad Rates on Recyclables—Exemptions* (not printed), served September 8, 1992.

¹⁵ These four proceedings were:

Ex Parte No. 290 (Sub-No. 5) (91-4), *Quarterly Rail Cost Adjustment Factor* (not printed), served September 19, 1991.

Ex Parte No. 290 (Sub-No. 5) (92-1), *Quarterly Rail Cost Adjustment Factor* (not printed), served December 20, 1991.

Ex Parte No. 290 (Sub-No. 5) (92-2), *Quarterly Rail Cost Adjustment Factor* (not printed), served March 20, 1992.

Ex Parte No. 290 (Sub-No. 5) (92-3), *Quarterly Rail Cost Adjustment Factor* (not printed), served June 19, 1992.

¹⁶ Ex Parte No. 431 (Sub-No. 2), *Review Of The General Purpose Costing System* (not printed), served September 25, 1990.

added to the trend used to adjust the RCAF for productivity and the trend was lengthened to eight years (1982-1989). Additionally, a geometric average replaced the arithmetic average formerly used.¹⁷

Auditing

Each Class I railroad is required to submit a report from an independent accountant stating that specified data in the Railroad's Annual Report Form R-1 have been examined using agreed-upon procedures, and have been found to be

in compliance with the Uniform System of Accounts for Railroad Companies. The accountant's report must present any material exceptions which may have come to the accountant's attention during the examination. The Commission reviewed the working papers of independent accountants for each Class I railroad to determine compliance.

Commission auditors also investigated transactions between and among railroads and their affiliated companies to determine the impact of such transactions on the railroads' financial condition.

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ENFORCEMENT

The Commission's enforcement activities were directed toward all types of non-compliance with our statute and related regulations with particular emphasis on violations in the following categories: (1) tariff compliance; (2) automobile driveaway service failures; (3) small business protection; (4) unauthorized transportation by Mexican-owned or controlled motor carriers; and (5) unsafe and uninsured operations. The Commission sought and obtained 1,900 consent agreements and injunctions against motor carriers and brokers to insure future compliance with provisions of both the Interstate Commerce Act and the ICC's regulations, and a total of \$228,447 was collected in penalties.

Tariff Compliance

In a major undercharge case filed by the Commission, the district court dismissed the Commission's request to enjoin the collection of undercharge claims, ruling that the Commission's credit rules were invalid and that the use of shipper codes in Transcon's tariffs were unlawful.¹ Reversing the district court in part, the Ninth Circuit Court of Appeals held that a trucking company has no retroactive remedy for an unlawful rate that it previously filed with the Commission. The court enjoined the Trustee of Transcon from collecting any undercharge claims on the grounds of the asserted unlawfulness of shipper-coded rates or the asserted unlawfulness of individual discount rates contained in Transcon's tariffs. In its decision, the Ninth Circuit confirmed the Commission's jurisdiction over the estates of bankrupt trucking companies and overturned the district court ruling that would have invalidated the ICC's credit regulations. The Court of Appeals

held, however, that the Commission's credit regulations do not preclude the application of a "loss of discount" provision in Transcon's tariff for non-timely payment of freight bills by shippers. This ruling permits the Transcon Trustee to apply a 90-day loss of discount provision in its tariffs, despite Transcon's failure to comply with the Commission's credit regulations governing such payment terms. Both sides have sought rehearing in the Ninth Circuit. Circuit was denied after the fiscal year closed. It is not yet clear whether additional appeals will be filed.

In another case involving an effort to stem the issuance of undercharge bills, the Commission reached a settlement on August 21, 1992, with AAA Trucking Corp. (AAA) and its Trustee, Joseph DiPasquale, in connection with a show-cause proceeding challenging AAA's right to issue balance-due bills against shippers claiming that the freight charges originally assessed were based upon illegal shipper-coded tariffs. The agreement provides that AAA Trucking Corp. will ask the bankruptcy court and various U.S. district courts to hold in abeyance all adversary proceedings concerning its claims against shippers grounded on the shipper-coded tariff issue pending final resolution of the *Transcon* case. The agreement also provides that AAA will put into an escrow account all money settlements based upon shipper-coded tariffs pending final disposition of the issues in *Transcon*.

In furtherance of its revised enforcement policy, the Commission completed a number of cases involving tariff violations. For example, in the case involving C.A.T.S. Nationwide, Inc. of Muskegon, WI, the carrier entered into a consent agreement, on October 2, 1991, in which it agreed not to transport property in interstate commerce unless its rates for that transportation are contained in a tariff filed with the

¹*Interstate Commerce Commission v. Transcon Lines, et al.*, No. 92-55036 (9th Cir. July 17, 1992) (*Transcon*).

Commission. The carrier also agreed to conform its leasing practices to our owner-operator leasing regulations.

In another tariff enforcement case, Roy's Bus Leasing Inc. of Euless, TX, (Roy's Bus) entered into an Agreement of Settlement, on February 21, 1992, that requires the motor carrier to comply with the Interstate Commerce Act and regulations requiring a common carrier to have its rates contained in a lawful tariff filed with the Commission. The carrier had been transporting passengers under a filed tariff that referred to the National Bus Traffic Association (NBTA) mileage guide. Roy's Bus had not, however, executed a concurrence or power of attorney indicating participation in the NBTA mileage guide.

Quick Delivery Inc. of Melrose Park, IL, executed an Agreement of Settlement, on April 13, 1992, after failing to file a concurrence or power of attorney with the Household Goods Carriers' Bureau to participate in its mileage guide. The carrier also failed to charge its tariff rate on shipments transported as a common carrier.

A Consent Agreement was executed, October 23, 1991, with Dante Gentilini Trucking, Inc. of Chicago, IL, because the carrier charged less than its tariff rate on shipments transported in common carriage and the carrier's leasing practices did not comply with Commission regulations. The carrier recalculated the compensation due owner-operators and made restitution in the amount of \$1,013.66.

In a similar case, Coast Refrigerated Trucking, Inc., of Holly Ridge, NC, signed an Agreement of Settlement, on October 29, 1991, in which it agreed to: (1) charge and receive only the rate specified in its tariff; and (2) acknowledge, investigate, and dispose of loss and damage claims in accordance with 49 C.F.R. Part 1005, and discontinue the practice of allowing shipper deductions and setoffs for the disposition of such claims.

J.R.C. Transportation, Inc., of Thomaston, CT, signed an Agreement of Settlement, December 5, 1991, in which it agreed to charge and receive only the rates for transportation or services specified in its tariffs on file with the Commission when such transportation or services are provided as a motor common carrier.

In another tariff case, Betty Carrington d/b/a Carrington Tours, executed a consent agreement, on June 18, 1992, to conform her tariff to Commission regulations, and to prepare and maintain expense bills for each trip as required by those regulations.

An injunction was obtained against Guatemala Club of California, of Los Angeles, CA and Irma Moran of Guatemala City, Guatemala, enjoining them from conducting operations as long as they do not have an applicable tariff on file with the Commission.¹ The order also requires that the defendants maintain proof of insurance with the Commission and designate an agent for service of process as required by Commission regulations.

In support of its efforts to directly stem the issuance of balance-due bills, the Commission entered into an Agreement of Settlement with Cowan Enterprises Inc. of Baltimore, MD (Cowan), on July 21, 1992, whereby Cowan agreed to withdraw balance-due bills for undercharges sent to customers of Key Way Transport, Inc. (Key Way), which assigned certain of its accounts receivable to Cowan in January, 1991. Cowan also agreed to refund all monies thus far collected or subsequently received from Key Way accounts as a result of balance-due billings for undercharges (except billing errors) within 90 days; and to report to the Commission the exact amount to be refunded pursuant to the agreement.

¹ *Interstate Commerce Commission v. Guatemala Club, et al.*, Civil No. 92-4295-R, (C.D. Cal. July 29, 1992).

In another case an injunction was entered requiring Advance Business Consultants, Inc. and Dennis Herring to permit the Commission to inspect and copy records relating to the transportation activities of Paul Yates Company (Yates).² The Commission had sought access to the balance-due bills issued to shippers who had employed the transportation services of Yates, a carrier no longer in business. The Court's order reaffirms the Commission's authority to review the records of rate auditors.

Automobile Driveaway Service Failures

The Commission has taken formal enforcement action to protect individual shippers of automobiles from brokers and carriers who fail to comply with applicable regulations and provide unacceptable levels of service.

In a case involving egregious service failures, James B. Box was found in civil contempt of a February, 1991, injunction and a June, 1991, order which found him in contempt of court for failing to deliver automobiles.³ Box was immediately incarcerated in the county jail until such time as he could work out a plan to refund money to customers of Big Shot Express, Inc., a now defunct automobile carrier owned by Box. Following submission of a repayment plan to the court on November 1, 1991, Box was released after spending approximately 54 hours in jail. The repayment plan required Box to pay \$1,000 per week into an escrow fund until all eligible claimants are paid in full.

Recognizing the continuing failure of James B. Box to provide adequate

service to the public, the Commission entered orders directing Box and his affiliated companies to comply with applicable statutes and regulations governing the transportation of automobiles and the brokering of transportation and to cease and desist from further violations.⁴ In addition, the Commission ordered that the operating authorities of Box and his entities be revoked, and barred automatic reinstatement upon compliance with insurance filing requirements. The Commission found that Box and his entities had (1) failed to make timely pick-up and deliveries; (2) failed to obtain release of vehicles from third parties to their owners; (3) failed to safeguard the automobiles against theft or vandalism; (4) refused to make timely refunds for transportation not provided; (5) retained cancellation fees without justification; (6) required shippers to accept delivery at points other than the agreed destination; (7) provided transportation without tariff authority or required cargo and public liability insurance policies on file with the Commission; and (8) failed to comply with the Commission's loss and damage regulations.

In a case involving one of Box's former agents, a judgment was entered in a U.S. district court in the amount of \$18,807 against Hubie Ray Towing Service Corp., of Jersey City, NJ, and Hubie Ray individually for failure to post a \$5,000 surety bond, failure to reimburse the Commission \$1,407 for removing cars from Mr. Ray's possession, and failure to pay \$12,400 in penalties after previously being held in contempt of court.⁵ The court instructed the Commission to allow Mr. Ray to make

² *Interstate Commerce Commission v. Paul Yates Company, Advance Business Consultants, Inc. and Dennis Herring*, Civil No. LRC-91-614 (E.D. Ark. June 26, 1992).

³ *Interstate Commerce Commission v. Big Shot Express, Inc., and James B. Box*, No. 91-87-CIV-ORL-18 (M.D. Fla. October 30, 1991).

No. MC-C-30188, *Big Shot Express, Inc. James B. Box d/b/a Jimmie Box, et al.* (not printed), served January 16, 1992.

⁵ *Interstate Commerce Commission v. Hubie Ray Towing Services Corp., et al.* No. CV 90-4416, HLS (D. N.J. October 29, 1991).

monthly payments on his obligations prior to enforcing and executing the judgment. The Commission filed suit against Hubie Ray after he refused to release several automobiles stored on his property in New Jersey until the shippers paid exorbitant storage charges on the vehicles. Pursuant to court order, all the involved cars have now been delivered to their owners.

A lien in the amount of \$18,807 plus interest (the amount of the judgment entered by the U.S. District Court for the District of New Jersey on October 31, 1991) was entered on 492-94 Ocean Avenue, Jersey City, NJ (the business property owned by Hubie Ray) by the Hudson County (New Jersey) Register of Deeds. The District Court in Newark entered the judgment against Hubie Ray Towing Service Corp. and Hubie Ray, individually, for failure to: (1) reimburse the ICC for the expenses incurred in taking possession of automobiles unlawfully being held by Mr. Ray; (2) post the required surety bond; (3) pay all claims; and (4) pay to the clerk of court the penalty imposed for failing to comply with prior court orders. In addition, the \$18,807 judgment has been referred to the Office of the U.S. Attorney in Newark for collection.

In another case involving a former agent of Jimmy Box, a U.S. district court judge in Richmond, VA, granted the Commission's motion to require Richard E. Snyder and BWI Managers, Inc., to release eight automobiles being held in Sandston, VA, pay all damage claims submitted after the cars were delivered, and to post a surety bond of \$10,000 with the clerk of court for the purpose of reimbursing the automobile owners for damages caused to the cars while in the defendant's possession.⁷ The Commis-

sion filed suit against Snyder and BWI after they refused to release several automobiles stored on their property in Sandstone, VA, by Circle C Truck Lines until the shippers of the cars paid storage charges on the vehicles. Pursuant to court order, all the involved cars have now been delivered to their owners, and the other claims for damages have been paid by either the shippers' or the carriers' insurance companies.

In a case involving flagrant shipper abuse, S&S Towing Service, Inc., of Los Angeles, CA, was hired by a Los Angeles based broker to pick up a vehicle at a shipper's residence and deliver it to a line-haul carrier for movement from Los Angeles to New York. Instead of delivering the vehicle to the line-haul carrier, the defendants kept it as leverage for claims allegedly owed by the broker. When the broker did not pay, the defendants claimed they were entitled to storage costs from the shipper. A preliminary injunction was issued preventing the defendants from selling the vehicle for storage costs and requiring them to release it to the shipper.⁸

Small Business Protection

Included within this enforcement program are cases involving violations of duplicate payment, overcharge, and loss and damage regulations; and violations of leasing regulations designed to prevent owner-operator abuses.

In a significant case involving violations of the Commission's regulations regarding the handling of duplicate and overcharge payments, Preston Trucking Company, Inc. of Preston, MD agreed, on June 30, 1992, to pay the Commission \$200,000. Preston tendered \$100,000 with a signed Agree-

⁷ *Interstate Commerce Commission v. BWI Managers, Inc., et al.*, 3:91 CV 214 (E.D. Va. December 2, 1991).

⁸ *Interstate Commerce Commission v. S & S Towing Service, Inc.*, Auto Transport Division and Oswaldo Pecci, CV-92-0248-RMT (C.D. Cal. March 30, 1992).

ment of Settlement and deposited the remaining \$100,000 in an escrow account to be maintained until Preston completes its efforts to make restitution to payors of duplicate payments who do not receive refunds from the carrier. Any refunds returned to Preston as undeliverable will be deposited into the escrow account, and the balance of the escrow account paid to the Commission on May 26, 1993, and May 26, 1994, when the restitution obligation is to be completed.

In a similar case involving the failure to comply with these regulations, Overnite Transportation Company of Richmond, VA, on June 2, 1992, signed an Agreement of Settlement, paid a civil forfeiture of \$39,500, and agreed to take the necessary action to comply with the Commission's regulations.

Expedited Freight Services, Inc., of Kenosha, WI, entered into a consent agreement, on November 22, 1991, to process and dispose of all loss and damage claims and all overcharge claims in compliance with the governing regulations. Pursuant to the terms of the agreement, Expedited disposed of all overcharge claims which had been pending for more than 60 days, as well as all loss and damage claims pending for more than 120 days.

In yet another duplicate payments case, CBL Trucking, Inc., of Delanco, NJ, executed a consent agreement, on February 19, 1992, wherein it agreed to comply with the regulations governing the handling of duplicate and unidentified payments and overcharges, review all outstanding payments received by the carrier since January, 1990, and process and make appropriate reimbursement of such payments by September 1, 1992.

In a similar case, an injunction was issued against H & W Motor Express Company of Dubuque, IA, for failing to process overcharge claims and refund overpayments in accordance with the

Commission's regulations.⁹ As a result of the court action, the carrier has refunded overpayments totalling \$28,689.

A permanent injunction was issued against Elfrink Truck Lines, Inc., of Advance, MO, enjoining the carrier from failing to comply with the Commission's duplicate payment and overcharge regulations.¹⁰ Elfrink was also ordered to refund all duplicate payments which it retained for more than 30 days, and to dispose of all overcharge claims pending for more than 60 days. The carrier refunded \$196,550 in duplicate payments and overpayments retained more than 30 days after identification, and paid \$86,000 in overcharge claims pending for more than 60 days.

An injunction was issued against Big H Transport, Inc. of Laredo, TX, enjoining the carrier from failing to remit C.O.D. collections to the destination payee within 15 days after delivery of the C.O.D. shipment.¹¹ The carrier was ordered to make an accounting and restitution of all C.O.D. payments withheld beyond 15 days from delivery. The carrier was also enjoined from transporting C.O.D. shipments without having filed tariffs with the Commission containing the rates, charges and rules governing such service.

In a case involving owner-operator abuses, an injunction was entered against Bryan Truck Line, Inc. of Bryan, OH, enjoining the carrier from failing to pay owner-operator lessors within 15 days after the submission of the neces-

⁹ *Interstate Commerce Commission v. H & W Motor Express Company*, Civil No. 92-1013 (N.D. Iowa, July 26, 1992).

¹⁰ *Interstate Commerce Commission v. Elfrink Truck Lines, Inc.*, S91-0018-C (C.D. Mo., June 1, 1992).

¹¹ *Interstate Commerce Commission v. Big H Transport, Inc.*, L-91-43 (S.D. Tex., November 15, 1991).

sary delivery documents as required by Commission regulations.¹²

An injunction was issued against Three Coast Carriers, Inc. and Riley Crosby requiring them to cease mishandling owner-operator escrow fund deposits.¹³ Crosby, the carrier's president, was also personally ordered to make restitution for the escrow fund mishandling to owner-operators who were not completely reimbursed under the carrier's Chapter 11 bankruptcy reorganization plan.

An injunction was obtained against Colorado-Denver Warehouse Delivery of Denver, CO for violations of the Commission's loss and damage regulations.¹⁴ The court enjoined the carrier from failing to pay, decline, or offer a firm compromise within 120 days after the filing of a written claim for loss, damage, or delay. In addition, the court required the carrier to notify claimants of the status of such claims within 120 days after receipt of each claim and every succeeding 60-day period thereafter while the claims remained pending.

In a case involving the transportation of household goods, an injunction was obtained against Betty Negrete, d/b/a Payless Moving and John M. Negrete of Phoenix, AZ, prohibiting each party from violating the loss and damage claims regulations, failing to prepare orders for service and to weigh shipments and transport them with reasonable dispatch, collecting amounts in excess of 110 percent of the estimated charges, and transporting shipments without appropriate operating

authority and evidence of insurance on file with the Commission.¹⁵

Unauthorized Transportation by Mexican Owned or Controlled Motor Carriers

A statutory moratorium currently bars the Commission from granting operating authority to foreign motor carriers of property and passengers.¹⁶ Mexican motor carriers of property domiciled in Mexico or owned or controlled by Mexican citizens and not domiciled in the United States can operate within described border or commercial zones under special Certificates of Registration issued by the Commission (49 U.S.C. 10530).

During this fiscal year, the Commission enforced the restrictions placed upon Mexican motor carriers of passengers by obtaining 12 injunctions to halt unauthorized and uninsured passenger transportation by Mexican carriers between points in Mexico and Texas.

Consistent with its efforts to enforce the statutory moratorium, as it relates to the transportation of property, the Commission denied an application seeking nationwide operating authority filed by Daniel Escarcega Tarin, d/b/a Transportes Express San Quintin of Calexico, CA. The application was denied because the applicant was a Mexican citizen.

The Commission, on February 5, 1992, obtained a consent agreement from Hidro Gas de Villa Ahumada, S.A. wherein the carrier agreed to stop transporting property beyond the U.S. border commercial zone described in its Certificate of Registration.

Interstate Commerce Commission v. Bryan Truck Line, Inc., No. 3:92 CV 7199 (N.D. Colo. May 15, 1992).

Interstate Commerce Commission v. Three Coast Carriers, Inc. and Riley Crosby, Civil No. CA-3-90-1399R (F.D. Tex. September 18, 1991).

Interstate Commerce Commission v. Colorado-Denver Warehouse Delivery, Civil No. 91-S-112 (D. Colo. December 18, 1991).

Interstate Commerce Commission v. John M. Negrete, Civil No. 86-0145-PHY-RCB (D. Ariz. February 11, 1992).

¹⁶ 49 U.S.C. §10922(a)(1).

No. MC-244361, Daniel Escarcega Tarin, d/b/a Transportes Express, San Quintin, Contract Carrier Application not printed, served February 27, 1992.

Unsafe or Uninsured Operations

The Commission's insurance compliance program emphasizes the use of consent agreements to cure insurance deficiencies. The Commission's regulations specify minimum insurance levels for various types of carriers and, when coverage expires or is canceled, the Commission's field staff conducts an investigation. Where violations are found, the Commission seeks voluntary compliance through consent agreements whereby involved carriers agree to cease operating until they have obtained appropriate insurance coverage.

During fiscal year 1992, the Commission obtained 1,884 consent agreements in insurance cases. As appropriate, the Commission takes stronger enforcement action for lack of insurance when carriers fail or refuse to obtain prescribed insurance. Overall, there were 20 injunctions obtained against carriers during the fiscal year for lack of adequate insurance.

The Commission conducts follow-up investigations to ensure that these carriers are complying with consent agreements and injunctions. Carriers that continue to operate without appropriate insurance are subject to appropriate remedial action, including contempt actions.

The Commission obtained a contempt order against Kenneth Arnold and his company, Falcon Motorcoach, Inc., of Chicago, IL for violating an injunction prohibiting them from transporting passengers without having public liability insurance in effect and on file with the Commission.¹⁹ The order imposed certain conditions on the carrier to protect the travelling public including providing the name of the carrier's insurer, as well as clearly identify-

ing the services to be rendered and the applicable charges.

The Commission took expedited action against uninsured carriers transporting hazardous materials. An injunction was obtained against Larry L. Cook, and his company, Mallory Transporting, Inc. of Ozark, MO, for engaging in uninsured operations including the transportation of mobile homes with butane, a flammable hazardous material, on board.²⁰ In a similar case, the Commission obtained an injunction against Chippers Service, Inc. of Easton, PA, based upon the transportation of kerosene and aviation fuel without having bodily injury and property damage liability insurance and cargo insurance in effect and on file with the Commission.²¹

In a significant decision that aids the Commission's enforcement effort in the area of insurance compliance, the U.S. Court of Appeals for the First Circuit affirmed a district court's decision and held that the doctrine of *res judicata* did not bar the Attorney General's action to impose civil penalties for conducting uninsured operations after the Commission obtained an injunction prohibiting such operations by the carrier.

In another significant decision involving the unauthorized and uninsured transportation of railroad crews, the U.S. Court of Appeals for the Seventh Circuit reversed a district court decision denying the Commission's request for an injunction prohibiting those operations based upon a lack of Federal jurisdiction.²²

¹⁹ *Interstate Commerce Commission v. Larry L. Cook and Mallory Transporting, Inc.*, 91-3356-CV-5-4 (W.D. Mo. January 27, 1991).

²⁰ *Interstate Commerce Commission v. Chippers Services, Inc.*, No. 92-CV-1223 (E.D. Pa. March 2, 1992).

²¹ *United States v. Alky Enterprises, Inc.*, No. 91-20221 (1st Cir. July 20, 1992).

²² *Interstate Commerce Commission v. City Veterans Taxicab Coop.*, No. 90-3562, Order (7th Cir. August 31, 1992).

¹⁹ *Interstate Commerce Commission v. Falcon Motorcoach and Kenneth Arnold*, 90 C 5788 (E.D. Ill. December 18, 1991).

The case was remanded to the lower court for proceedings consistent with the decision in *Interstate Commerce Commission v. Mr. B's Services, Ltd.*, which held that the Commission retained jurisdiction over the interstate transportation of traincrews by taxicabs for distances in excess of 70 miles.²³ Both Seventh Circuit decisions were

significant because the court of appeals deferred to the longstanding Commission interpretations regarding the character of the transportation in issue. Further, the decisions made it clear that carriers providing interstate line-haul transportation of train crews must possess Commission authority, as well as appropriate levels of insurance.

COURT ACTIONS

During the past fiscal year, the Commission's Office of the General Counsel played an active role in representing the agency in the United States Supreme Court and in the lower federal courts. The fiscal year began with over 300 agency cases pending before the courts and saw more than 50 new cases filed during the year. In fiscal year 1992, the courts decided some 170 cases, leaving some 280 cases pending at year-end.¹ Of the decided cases, the Supreme Court issued a written opinion in one and denied *certiorari* in six. The various courts of appeals decided over 150 cases, and federal district or bankruptcy courts decided the remainder.

Motor carrier undercharge cases represented the largest single area of litigation involving the Commission. However, the Commission obtained court decisions on a number of other significant issues, involving both rail and motor carriage. The Commission's decisions were, for the most part, affirmed by the courts.

Motor Cases

The undercharge controversy mushroomed following the Supreme Court's *Maislin* decision,² as representatives of defunct motor carriers greatly expanded their collection efforts. In *Maislin* the Supreme Court had reaffirmed the primacy of the filed rate doctrine, requiring interstate common carriers to collect only those rates published in their tariffs filed with the ICC. However, under the asserted mantle of *Maislin*, defunct carriers began to assert undercharge claims even where the rate originally collected was on file with the

Commission, by unilaterally disavowing the filed rate originally collected as somehow unlawful and seeking to collect a different, higher filed rate.

To properly enforce the filed rate doctrine and protect shippers from overreaching collection actions, the Commission took a variety of enforcement steps this year. The first was to sue the trustee of one carrier, Transcon Lines, in federal district court, to stop him from collecting a certain class of undercharges to which the Commission believes the carrier is not entitled. Transcon Lines had expressed many of its tariff rates in terms of a percentage discount from a higher filed rate, with a provision that, if a shipper failed to pay the freight bill in full within 90 days, the shipper would forfeit the "discounted rate" and be charged at a higher, undiscounted rate. However, under 49 U.S.C. 10743, a carrier may not assert such a credit-related term except as authorized by the Commission's credit regulation, and Transcon failed to comply with those regulations.

In defending against that suit, the Transcon trustee argued that the terms of the tariff took precedence over the Commission's statutorily-mandated credit regulations and, alternatively, that Transcon's discount tariffs were unlawful because they employed shipper account code numbers to identify traffic. The district court ruled for the carrier, not only on the loss-of-discount issue, but also on the much broader ground that all of Transcon's shipper account-coded tariff rates were illegal.³ The latter ruling would affect almost all former Transcon traffic, without regard to the time of payment. The Commission obtained a stay of the district court's ruling by the Ninth Circuit pending its review of those rulings.

¹ Pending cases include decided cases in which the court has not issued a final mandate pending expiration of the time for a further appeal.

² *Maislin Indus., U.S. Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 110 S.Ct. 2759 (1990), rev'g *Maislin Indus., Inc. v. Primary Steel, Inc.*, 879 F.2d 400 (8th Cir. 1989) (*Maislin*).

³ *ICC v. Transcon Lines*, No. 91-5036-IH (C.D. Cal. November 25, 1991).

On appeal, the Ninth Circuit overturned that portion of the district court's ruling regarding the lawfulness of shipper-coded tariffs and ruled, instead, that carriers and their trustees cannot base an undercharge claim on the asserted illegality of the carrier's own tariff. The Ninth Circuit agreed with the district court, however, that the "loss-of-discount" provision of the carrier's tariff trumps the agency's credit regulations.⁴ The Commission and the Transcon trustee have both asked the court for reconsideration.

In a different kind of enforcement action, the Commission directed the trustee of another bankrupt carrier, P'I'E, to "show cause" why he should not be ordered to stop unilaterally repudiating P'I'E's shipper account-coded filed rates.⁵ Instead of responding to the agency's show-cause order, the P'I'E trustee obtained an order from that carrier's bankruptcy court enjoining the ICC from proceeding against P'I'E.⁶ The Commission has both appealed that ruling to the district court and sought to have the case removed from the bankruptcy court.⁷ In the meantime, in a related case, the district court granted a shipper's request for stay of an individual P'I'E collection suit and referred to the Commission the issues of whether those undercharge claims violate the ICC's credit regulations or would result in the collection of unreasonable rates.⁸

In other significant undercharge litigation, the Fifth Circuit agreed with the Commission that a loss-of-discount provision of a motor carrier's tariff could not be applied where they were not authorized under the agency's credit regulations.⁹ The Fifth Circuit also disallowed undercharge claims where the carrier's tariff was void, pursuant to the Commission's regulations at 49 CFR 1312.4(d) requiring carrier participation in the mileage guides to which its rate tariff refers.¹⁰

Another important issue before the courts was whether a shipper's regulatory defenses to undercharge claims should be considered and referred to the Commission before payment of the claim, or whether the shipper must pay first and then seek a Commission reparations determination (even if it could not collect on a later reparations order). The Fifth Circuit reversed its previously held position and ruled that rate reasonableness defenses should be resolved (by referral to the Commission) *before* requiring payment of an undercharge claim.¹¹ The only circuit to now

⁴ *Delta Traffic Service, Inc. v. ADM of Mississippi, Inc.*, No. 91-1098 (5th Cir. January 28, 1992), *aff'g* *Delta Traffic Service, Inc. v. ADM of Mississippi*, CA No. J88-0188 (L) (S.D. Miss. Dec. 21, 1990), *aff'g* Docket No. 40296, *ADM of Mississippi, Inc.—Pet. for Decl. Order—Rates and Charges of Campbell 66 Express, Inc.* (not printed), served June 20, 1990.

⁵ *Freightcor Services, Inc. v. Vitro Packaging, Inc.*, 969 F.2d 1563 (5th Cir. 1992), *rev'g* *Freightcor Services, Inc. v. Vitro Packaging, Inc.*, No. CA3-90-1879-D (N.D. Tex. March 15, 1991). *Accord* *Pope v. Amoco Fabrics & Fibers Co.* (In re ATF Trucking Co.), No. 92-AR-0961-S (N.D. Ala. September 17, 1992) *aff'g* Docket No. 40526, *Amoco Fabrics and Fibers Co. v. Max C. Pope, Trustee of the Estate of A.T.F. Trucking Co.* (not printed), served February 26, 1992; *Lovett v. Wonderoast* (In re Estate of Transp. Syst. Intern., Inc.), Adv. No. 4-89-292 (Bankr. D. Minn. June 26, 1992), *aff'g* *Wonderoast, Inc.—Pet. for Decl. Order—Certain Rates and Practices of Transp. Sys. Intern., Inc.*, 8 I.C.C.2d 272 (1992).

¹¹ *Advance-United Expressways, Inc. v. Eastman Kodak Co.*, 965 F.2d 1347 (5th Cir. 1992).

² *ICC v. Transcon Lines*, 968 F.2d 798 (9th Cir. 1992), *pets. for reh'g* pending.

³ Docket No. 40785, *Olympia Holding Co.—PIE Nationwide—Show Cause Proceeding* (not printed), served April 16, 1992.

⁶ *Whitaker v. ICC*, Adv. No. 92-2747 (Bankr. M.D. Fla. June 8, 1992) (In re *Olympia Holding Corp.*, No. 90-4195-BKC-3P7).

⁷ *ICC v. Whitaker*, No. 92-603-Civ-J-14 (M.D. Fla. appeal filed July 13, 1992).

⁸ *Dillard Department Stores v. Fidelcor Business Corp.*, No. 91-953-Civ-J-16 (M.D. Fla. July 30, 1992).

hold to the contrary is the Fourth Circuit, and its decision on the matter is now pending Supreme Court review¹² at the Commission's suggestion.¹³

A related issue is whether, upon referral, the Commission is limited to the issues specifically referred to it. Courts have agreed with the Commission's view that it is not.¹⁴

In a non-undercharge motor carrier matter, and a case of first impression, the Eighth Circuit confirmed the Commission's authority under 49 U.S.C. 11343(e)(1) to exempt from state regulation the purchase of intrastate operating authority in conjunction with the purchase of interstate authority.¹⁵ The Eleventh Circuit, however, limited this ruling by restricting the agency's exemption authority to situations where both intrastate and interstate operating rights are involved.¹⁶

Rail Cases

The Supreme Court in the *Boston and Maine* case¹⁷ affirmed the Commission's first exercise of the condemnation authority granted by the Rail Passenger Service Act to require the conveyance of 48.8 miles of railroad track from the Boston and Maine Corporation to the National Railroad Pas-

senger Corporation (Amtrak), which in turn conveyed title to another carrier retaining for its use only trackage rights. The Commission's decision had earlier been set aside by the decision of the D.C. Circuit, which the Supreme Court reversed. The Supreme Court's decision ensures the continued operation of Amtrak's passenger rail service between Washington, D.C. and Montreal. More importantly, it restores to Amtrak a vital remedy afforded by Congress to prevent disruptions to its intercity passenger service.

The D.C. Circuit affirmed a Commission decision adopting a productivity adjustment to the rail cost adjustment factor (RCAF).¹⁸ The RCAF is a statutory mechanism that facilitates prompt recovery by railroads of inflationary cost increases. A productivity adjustment reflects the fact that improvements in railroad efficiency ameliorate increased costs of material and labor needed to provide rail service. The court rejected the railroads' argument that the Commission lacked authority to adopt the productivity adjustment. It also rejected the argument of several shippers that the current RCAF should be reduced to reflect productivity improvements experienced before the productivity adjustment became effective.

The D.C. Circuit also affirmed two other noteworthy Commission decisions. In one the agency found that Multiple Independent Factor Through Rates (MIFTRs) published by various rail carriers are lawful joint rates.¹⁹ MIFTRs, which many carriers now use to increase their flexibility and minimize joint rate disputes,

¹² *Reiter v. Cooper*, 112 S.Ct. 1934 (1992), granting petition for certiorari review of *In re Carolina Motor Express, Inc.*, 949 F.2d 107 (4th Cir. 1991).

¹³ In opposing certiorari in *Rebel Motor Freight, Inc. v. ICC*, 112 S.Ct. 617 (1991), the government suggested to the Court that it hear the Fourth Circuit case as the better vehicle for reviewing this important issue.

¹⁴ See e.g., *Pope v. Amoco Fabrics & Fibers Co.*, No. 92-AR-0961-S (N.D. Ala. September 17, 1992), appeal pending, No. 92-6877 (11th Cir. filed September 30, 1992).

¹⁵ *Minn. Transp. Regulation Bd. v. ICC*, 966 F.2d 335 (8th Cir. 1992).

¹⁶ *North Ala. Express, Inc. v. ICC*, No. 91-7662 (11th Cir. Sept. 3, 1992) *pet. for reh'g pending*.

¹⁷ *National R.R. Pass. Corp. v. Boston & Maine*, 112 S.Ct. 1394 (1992) *rev'g Boston & Maine Corp. v. ICC*, 911 F.2d 743 (D.C. Cir. 1990).

¹⁸ *Edison Electric Institute, et al. v. ICC*, 969 F.2d 1221 (D.C. Cir. 1992), *aff'g Railroad Cost Recovery Procedures—Productivity Adjustment*, 5 I.C.C.2d 434 (1989).

¹⁹ *Society of the Plastics Indus. v. ICC*, 955 F.2d 722 (D.C. Cir. 1992), *aff'g Docket No. 40298, Society of the Plastics Indus. v. Consolidated Rail Corp.* (not printed), served Oct. 22, 1990.

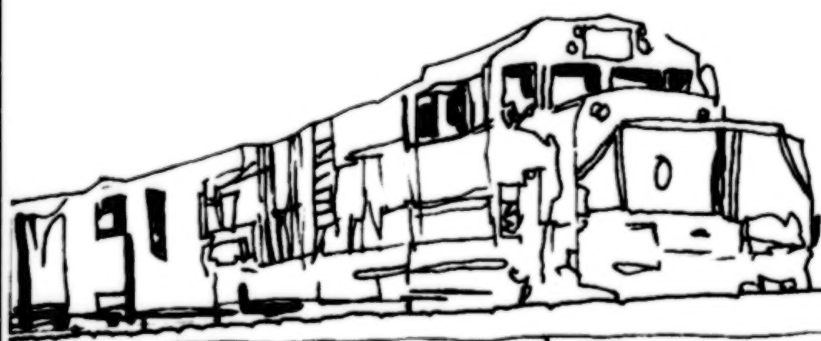
allow railroads unilaterally to change the divisions or factors of the joint rate. The decision is important because it gives the Commission latitude to accept innovative approaches to ratemaking.

In another case, the D.C. Circuit upheld the agency's decision finding that railroads did not violate their common carrier obligation to serve grain shippers. Certain shippers had complained that carriers had not supplied enough grain cars to meet peak period de-

mands, and as a result had violated their common carrier obligation. To remedy the carriers' alleged service deficiencies, the shippers had asked the Commission to overturn the longstanding rule that carriers may use their own cars first before using cars supplied by private parties. The court upheld the Commission's finding that, in general, railroad practices concerning use of private cars on the rail system were not anticompetitive or otherwise unlawful.²⁰

²⁰ *Shippers' Comm., OT-5 v. ICC*, 968 F.2d 75 (D.C. Cir. 1992) *aff'g* *Shippers Comm. v. Ann Arbor R.R.*, 51 C.C.2d 856 (1964).

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APPENDIX A

COMMISSION ORGANIZATION

(as of September 30, 1992)

The Bureau and Offices of the Commission are listed below. Heads of each Bureau or Office report to the Chairman via the channels indicated on the organization chart.

OFFICE OF THE CHAIRMAN

Chairman	Edward J. Philbin
Chief of Staff	Jon R. Stover
Counsel to the Chairman	Edward Whitfield
Special Assistant	Sharron Rankine
Confidential Assistant	Lee Ann Huey

OFFICE OF THE VICE CHAIRMAN

Vice Chairman	Gail Clements McDonald
Chief of Staff	Dixie Horton
Attorney Advisor	Beryl Gordon
Attorney Advisor	Amy Northcutt
Confidential Assistant	Vera Dowhan
Secretarial Assistant	Lorelei Ransome

OFFICE OF COMMISSIONER SIMMONS

Commissioner	J. J. Simmons III
Chief of Staff	Thomas T. Vining
Attorney Advisor	Van A. Bosco
Attorney Advisor	Ricky L. Crawford
Confidential Assistant	Hazel M. Lowe
Secretarial Assistant	Rebecca W. Powell

OFFICE OF COMMISSIONER PHILLIPS

Commissioner	Karen Borlaug Phillips
Chief of Staff	Debra A. Weiner
Attorney Advisor	Samuel E. Eastman
Staff Economist	Janie A. McCutchen
Executive Assistant	Marie C. Anderson

OFFICE OF COMMISSIONER EMMETT

Commissioner	Edward M. Emmett
Chief of Staff	Robert A. Voltmann
Attorney Advisor	William A. Mullins
Confidential Assistant	Lenore M. Cummings
Secretarial Assistant	Hugh Ann Walls

STAFF OFFICIALS

OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Director	Bernard Gaillard
Assistant to the Director	Brenda B. White
Associate Director	William J. Love
Deputy Director, Section of Operations Enforcement	Charles E. Wagner

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

Assistant to the Chairman and Director	H. Spofford Canfield IV
Deputy Director	Joy C. Belew
Congressional Liaison	Vacant
Administrative Assistant	Carolyn I. Johnson

OFFICE OF ECONOMICS

Director	Howard K. Face
Assistant to the Director for Administration	Aubrey H. Herndon
Assistant to the Director for Policy Review	Leslie J. Selzer
Chief, Section of Audit and Accounting	William F. Moss III
Chief, Section of Financial Analysis	Ward L. Ginn, Jr.
Chief, Section of Rail Costing	William T. Bono
Associate Director—Analysis	Leland L. Gardner
Chief, Section of Energy and Environment	Elaine K. Kaiser
Chief, Section of Rail Services Planning	Michael E. Sullivan
Chief, Section of Research and Analysis	Michael A. Redisch

OFFICE OF EXTERNAL AFFAIRS

Director	Peggy M. Venable
External Affairs Assistant	Verna Annetha Harris
Associate Director, Public Affairs	Alvin H. Brown
Associate Director, Public Affairs	A. Dennis Watson

OFFICE OF THE GENERAL COUNSEL

General Counsel	Robert S. Burk
Deputy General Counsel	Henri F. Rush
Senior Associate General Counsel	Ellen D. Hanson
Associate General Counsel	John J. McCarthy, Jr.
Associate General Counsel	Craig M. Keats

OFFICE OF HEARINGS

Chief Administrative Law Judge	Paul S. Cross
Administrative Law Judge	Paul J. Clerman
Secretary/Administrative Officer	Alice Durham
Case Control Manager	Linda M. Charles

OFFICE OF HUMAN RELATIONS

Director	Alexander W. Dobbins
EEO Manager	Janice C. Mackey
EEO Assistant/Spanish Speaking Coordinator	Lydia A. Wright

OFFICE OF THE INSPECTOR GENERAL

Inspector General	James J. McKay
Assistant Inspector General for Audit	Robert Merson
Staff Associate	Darlene Proctor

OFFICE OF THE MANAGING DIRECTOR

Managing Director	H. J. Rhodes
Counsel to the Managing Director, Privacy/FOIA Officer	S. Arnold Smith
Information Resource Management	Kathleen M. King
Chief, Budget and Fiscal Office	Anthony Jacobik, Jr.
Director, Personnel Office	Richard H. Mooers
Chief, Administrative Services	Virgil L. Schultz
Chief, Systems Development	Edward F. Welkener

OFFICE OF PROCEEDINGS

Director	David M. Konschnik
Assistant to the Director	Richard L. Gagnon
Deputy Director, Legal Analysis	Joseph H. Dettmar
Deputy Director, Legal Counsel	Richard B. Felder
Assistant to the Director, Section of Administration	Julia M. Farr
Management Analyst	Charles L. Renninger
Administrative Officer	Melinda K. Collins

OFFICE OF PUBLIC ASSISTANCE

Director and Special Counsel	Edward E. Guthrie
Deputy Director and Small Business Assistance Officer	Dan G. King

OFFICE OF THE SECRETARY

Secretary	Sidney L. Strickland, Jr.
Chief, Legal Unit	Anne K. Quinlan
Chief, Commission Service Section	Ellen R. Keys
Chief, Public Records Section	Edward C. Fernandez
Administrative Officer	Madeline M. Echols

OFFICE OF TARIFFS

Director	Neil S. Llewellyn
Assistant to the Director	James W. Greene
Chief, Section of Tariff Maintenance and Compliance	Charles E. Langyher III
Chief, Section of Rates and Informal Cases	Lawrence C. Herzog
Administrative Officer	Margie S. Yeager

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES****EASTERN REGION**

Regional Headquarters	Richard M. Biter Regional Director 3535 Market Street Room 16400 Philadelphia, PA 19104
Atlanta	101 Marietta Tower Building 101 Marietta Street, N.W. Room 1007 Atlanta, GA 30303
Baltimore	1025 Fallon Federal Building Charles Center 31 Hopkins Plaza Baltimore, MD 21201
Boston	Boston Federal Office Building 10 Causeway Street Room 1015 Boston, MA 02222
Charlotte	Room CC-516 Mart Office Building 800 Briar Creek Road Charlotte, NC 28205
Cleveland	Commerce Plaza 7123 Pearl Road Room 310 Middleburg Heights, OH 44130
Jacksonville	1851 Executive Center Drive Suite 204 Jacksonville, FL 32207
New York	Jacob K. Javits Federal Building 26 Federal Plaza Room 1807 New York, NY 10278

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES.—Continued****CENTRAL REGION**

Regional Headquarters	William Redmond, Jr. Regional Director Xerox Center 55 West Monroe Suite 550 Chicago, IL 60603
Fort Worth	411 West 7th Street Suite 510 Fort Worth, TX 76102
Indianapolis	Federal Building & U.S. Courthouse 46 East Ohio Street Room 429 Indianapolis, IN 46204
Kansas City	2111 Federal Building 911 Walnut Street Kansas City, MO 64106
Minneapolis	Federal Building & U.S. Courthouse 110 South Fourth Street Room 475 Minneapolis, MN 55401
Omaha	Federal Office Building Room 728 106 South 15th Street Omaha, NE 68102
St. Louis	1222 Spruce Street Room 1.207 St. Louis, MO 63103

**DIRECTORY OF INTERSTATE COMMERCE COMMISSION
FIELD OFFICES.—Continued****WESTERN REGION**

Regional Headquarters	John H. Kirkemo Regional Director 211 Main Street Suite 500 San Francisco, CA 94105
Denver	Federal Office Building 1961 Stout Street Room 440 Denver, CO 80294
Los Angeles	Suite 304 360 East 2nd Street Los Angeles, CA 90012
Salt Lake City	2414 Federal Building 125 S. State Street Salt Lake City, UT 84138
Seattle	1894 Federal Building 915 Second Avenue Seattle, WA 98174

INTERSTATE COMMERCE COMMISSIONERS 1887-1992

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich.	Rep.	Mar. 31, 1887	Jan. 12, 1892
2. MORRISON, William R.	Ill.	Dem.	Mar. 31, 1887	Dec. 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem.	Dec. 31, 1887	Dec. 31, 1890
4. WALKER, Aldace F.	Vt.	Rep.	Mar. 31, 1887	Mar. 31, 1889
5. BRAGG, Walter L.	Ala.	Dem.	Mar. 31, 1887	Aug. 21, 1891
6. VEAZEY, Wheelock G.	Vt.	Rep.	Sept. 10, 1889	Dec. 20, 1896
7. KNAPP, Martin A.	N.Y.	Rep.	Mar. 2, 1891	Dec. 12, 1910
8. McDILL, James W.	Iowa	Rep.	Jan. 13, 1892	Feb. 28, 1894
9. CLEMENTS, Judson C.	Ga.	Dem.	Mar. 17, 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem.	May 2, 1894	Mar. 6, 1905
11. PROUTY, Charles A.	Vt.	Rep.	Dec. 21, 1896	Feb. 2, 1914
12. CALHOUN, William J.	Ill.	Rep.	Mar. 21, 1898	Sept. 30, 1899
13. FIFER, Joseph W.	Ill.	Rep.	Nov. 4, 1899	Dec. 30, 1905
14. COCKRELL, Francis M.	Mo.	Dem.	Mar. 11, 1905	Dec. 31, 1910
15. LANE, Franklin K.	Calif.	Dem.	July 2, 1906	Mar. 5, 1913
16. CLARK, Edgar E.	Iowa	Rep.	July 31, 1906	Aug. 13, 1921
17. HARLAN, James S.	Ill.	Rep.	Aug. 28, 1906	Dec. 31, 1918
18. McCHORD, Charles C.	Ky.	Dem.	Dec. 31, 1910	Jan. 1, 1926
19. MEYER, Balthasar H.	Wis.	Rep.	Dec. 31, 1910	Apr. 30, 1939
20. MARBLE, John H.	Calif.	Dem.	Mar. 10, 1913	Nov. 21, 1913
21. HALL, Henry C.	Colo.	Dem.	Mar. 21, 1914	Jan. 13, 1928
22. DANIELS, Winthrop M.	N.J.	Dem.	Apr. 6, 1914	July 1, 1923
23. AITCHISON, Clyde B.	Oreg.	Rep.	Oct. 5, 1917	July 10, 1952
24. WOOLLEY, Robert W.	Va.	Dem.	Oct. 5, 1917	Dec. 31, 1920
25. ANDERSON, George W.	Mass.	Dem.	Oct. 15, 1917	Nov. 5, 1918
26. EASTMAN, Joseph B.	Mass.	Ind.	Feb. 17, 1919	Mar. 15, 1944
27. FORD, Henry J. ¹	N.J.	Dem.	June 11, 1920	Mar. 4, 1921
28. POTTER, Mark W.	N.Y.	Dem.	June 24, 1920	Feb. 20, 1925
29. ESCH, John J.	Wis.	Rep.	Mar. 28, 1921	May 29, 1928
30. CAMPBELL, Johnston B.	Wash.	Rep.	May 5, 1921	Jan. 6, 1930
31. LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32. COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33. McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34. WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35. TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36. BRAINERD, Ezra Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37. PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38. FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934

¹ Recess appointment only, not confirmed.

INTERSTATE COMMERCE COMMISSIONERS **1887-1992.—Continued**

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
39. LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40. TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41. MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42. MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43. SPLAWN, Walter M.W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44. CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45. ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46. ALDRIDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47. PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48. JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49. BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50. MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51. CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52. KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53. ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54. ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55. CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56. FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57. TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58. WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59. HUTCHINSON, EVERETT	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60. MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61. MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62. WALRATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63. McPHERSON, Donald P., Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64. GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65. WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66. HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67. BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68. TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69. TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70. BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71. DEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72. STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73. SYPHERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74. HARDIN, Dale W.	Ill.	Rep.	July 31, 1967	Aug. 31, 1977
75. BURKE, Wallace R.	Conn.	Dem.	Aug. 21, 1968	June 28, 1969
76. JACKSON, Donald L.	Calif.	Rep.	Mar. 20, 1969	June 30, 1972
77. GRESHAM, Robert C.	Md.	Rep.	Dec. 15, 1969	June 18, 1982
78. BREWER, W. Donald	Colo.	Rep.	July 23, 1970	June 30, 1974

INTERSTATE COMMERCE COMMISSIONERS **1887-1992.—Continued**

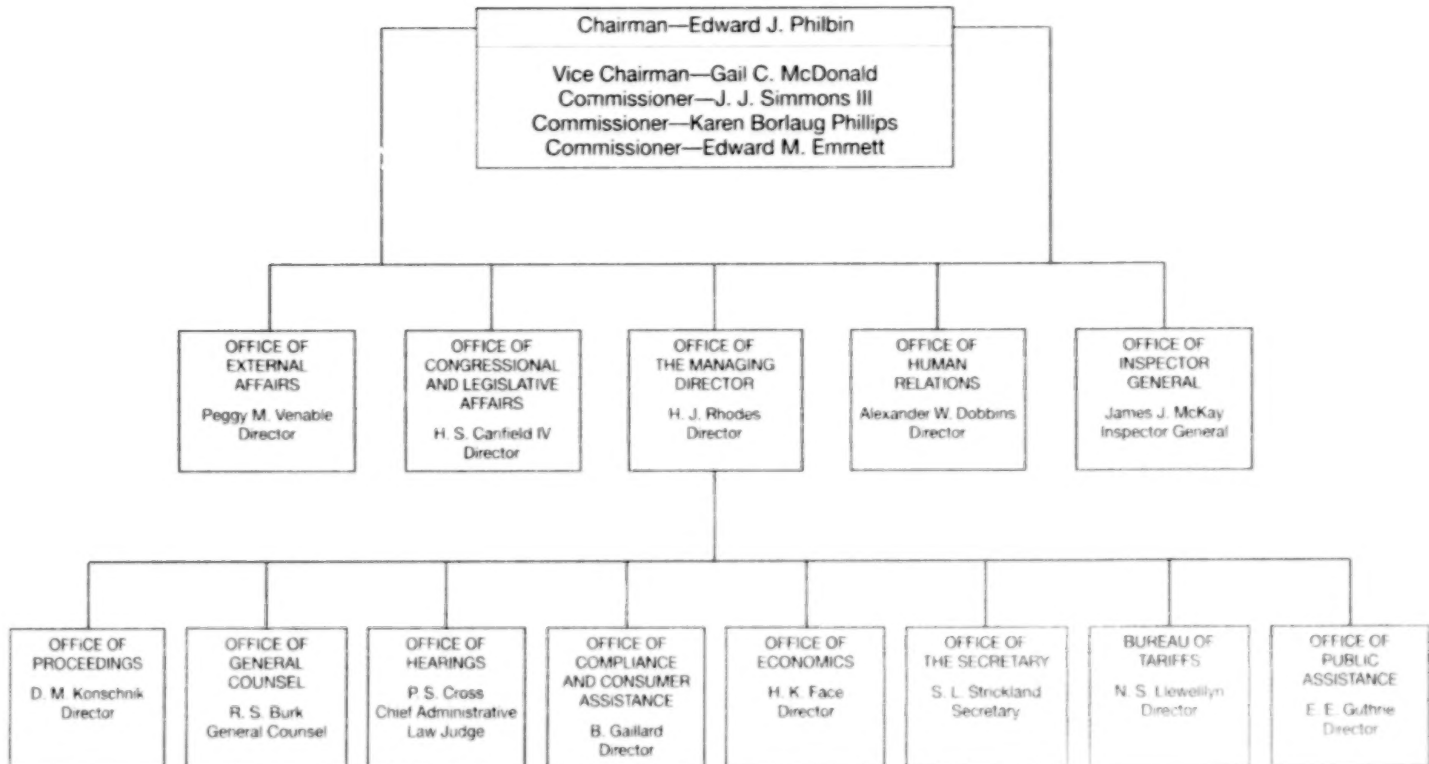
Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
79. WIGGIN, Chester M., Jr.	N.H.	Rep.	Oct. 24, 1972	July 31, 1973
80. McFARLAND, Alfred T.	Tenn.	Ind.	Nov. 1, 1972	Nov. 10, 1977
81. MONTEJANO, Rodolfo ²	Calif.	Dem.	Nov. 3, 1972	Mar. 2, 1973
82. O'NEAL, A. Daniel, Jr.	Wash.	Dem.	Apr. 12, 1973	Dec. 31, 1979
83. CLAPP, Charles L.	Mass.	Rep.	Mar. 14, 1974	Mar. 19, 1982
84. CORBER, Robert J.	Va.	Rep.	Mar. 13, 1975	Dec. 1, 1976
85. CHRISTIAN, Betty Jo	Tex.	Dem.	Apr. 7, 1976	Dec. 31, 1979
86. TRANTUM, Thomas A.	Conn.	Rep.	July 23, 1979	July 31, 1981
87. GASKINS, Darius W.	D.C.	Dem.	July 23, 1979	Feb. 1, 1981
88. ALEXIS, Marcus	Ill.	Dem.	Aug. 27, 1979	June 30, 1981
89. GILLIAM, Reginald E.	Va.	Dem.	Apr. 21, 1980	Feb. 1, 1983
90. TAYLOR, Reese H., Jr.	Nev.	Rep.	June 25, 1981	Dec. 31, 1985
91. STERRETT, Malcolm M.B.	Md.	Rep.	Feb. 12, 1982	Aug. 11, 1988
92. ANDRE, Frederic N.	Ind.	Rep.	Mar. 19, 1982	Nov. 21, 1989
93. SIMMONS, J.J. III ³	Okla.	Dem.	Apr. 27, 1982 Sept. 10, 1984	Feb. 28, 1983
94. GRADISON, Heather J.	Ohio	Rep.	June 18, 1982	Feb. 12, 1990
95. LAMBOLEY, Paul H.	Nev.	Dem.	Sept. 11, 1984	Oct. 1, 1990
96. STRENIO, Andrew J. Jr.	Md.	Dem.	Sept. 14, 1984	Dec. 31, 1985
97. PHILLIPS, Karen B.	Va.	Rep.	Aug. 11, 1988	
98. EMMETT, Edward M.	Tex.	Rep.	Nov. 21, 1989	
99. PHILBIN, Edward J.	Calif.	Rep.	Feb. 12, 1990	
100. McDONALD, Gail C.	Okla.	Dem.	Oct. 5, 1990	

² Recess appointment only, not confirmed.

³ Commissioner Simmons resigned as a Commission member in February 1983 following his confirmation as Under Secretary of the Department of the Interior. He rejoined the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION

Organizational Chart



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APPENDIX B

COMMISSION WORKLOAD

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1992.

MOTOR MATTERS					
Case Type	Open-ings	Opposed	Closings		Total
			Unop-posed	Dismissed Rejected/ With-drawn	
Rulemakings	11	9	2	2	13
Motor Property Licensing:					
Initial Common	4,451	0	4,476	35	4,511
Initial Contract	7,547	2	7,513	36	7,551
Extension Common	452	1	462	4	467
Extension Contract	435	0	442	6	448
Motor Passenger Licensing:					
Initial Common	639	2	610	7	619
Initial Contract	188	0	181	2	183
Extension Common	77	3	66	2	71
Extension Contract	4	0	5	0	5
Passenger Carrier Exit	1	1	0	0	1
Water Carrier Licensing	9	0	11	2	13
Freight Forwarder Licensing	123	0	112	14	126
Property Broker Licensing:					
Initial	3,192	0	3,224	50	3,274
Extension	17	0	17	2	19
Motor Carrier Complaints:					
Rate: Ex Parte MC-177	154	100	0	56	156
Interstate/Intrastate	6	4	0	0	4
Other	2	4	0	0	4
Restriction Removal	1	0	1	0	1
Investigation & Suspension	8	1	2	0	3
Motor Rate	22	6	4	2	12
Passenger Rate Review	1	0	1	0	1
Motor Carrier Finance	245	8	186	22	216
Small Carrier Transfer	641	0	623	14	637
Motor Finance Temporary					
Authority	54	2	47	2	51
Rate Bureau	0	0	2	0	2
Other Motor Matters	6	0	7	1	8
Total	18,288	143	17,994	259	18,396

¹ Includes 237 exemptions according to docket Ex Parte No. 55 (Sub-No. 57).

² The Commission approved amendments in 2 proceedings.

TABLE 1.—Distribution by Method of Disposition of Proceedings/Cases Opened and Closed During Fiscal Year 1991.—Continued

RAIL MATTERS				
Case Type	Openings ³	Pending	Decisions ⁴	
			Procedural	Substantive
Rulemakings and Other Ex Parte Proceedings	28	29	24	69
Abandonments:				
Formal applications ⁵	18	10	9	71
Conrail under NERSA ⁶	2	0	0	3
Exemptions ⁷	99	36	8	206
Rates:				
Complaints, Declaratory Orders, Investigations and Rate Bureau Activity	9	20	31	61
Investigations and Suspensions	1	0	3	0
Exemptions	1	0	1	1
Finance Docket:				
Exemptions ⁸	187	17	22	202
Other ⁹	21	24	55	70
Total	366	136	153	683

³ Excludes filings rejected by letter, reopenings and court remands.

⁴ This fiscal year a change in Commission accounting for procedural and substantive decisions was made to reflect internal reorganization. Procedural decisions are now those issued by the Legal Unit of the Office of the Secretary. In addition to these decisions, 162 miscellaneous issuances were served. Where a single decision has embraced proceedings, the decision is counted only once.

⁵ Includes advisory decisions to Bankruptcy Courts.

⁶ North East Rail Service Act, applies only to Consolidated Rail Corporation.

⁷ Includes petitions and notices of exemption.

⁸ Includes petitions and notices of exemption.

⁹ Includes mergers and consolidations, feeder line acquisitions, arbitration review proceedings, petitions seeking declaratory order, and other financial transactions.

TABLE 2.—Tariff Schedules, Fiscal Year 1992.

	Received	Criticized	Rejected
Freight:			
Common Carrier Tariffs:			
Rail	116,903	117	476
Motor	1,159,106	5,373	6,234
Water	56,212	27	190
Freight Forwarder	242	5	9
International Ocean-Land Intermodal ..	57,265	0	0
Total	1,389,728	5,522	6,909
Contract Carrier Filings:			
Rail Contracts	38,139	0	104
Rail Summaries	38,942	1,997	104
Total	77,081	1,997	208
Passenger Tariffs:			
Rail	0	0	0
Motor	3,544	274	180
Water	0	0	0
Total	3,544	274	180
Grand total	1,470,353	7,793	7,117

Source of Data: Bureau of Traffic statistical reports.



TABLE 3.—Action Taken on Proposals (Protested and Non-Protested) Considered by the Suspension/Special Permission Board, Fiscal Year 1992.

	Rail	Motor	Water	Pipeline	Total
Suspension Cases:					
Suspended	1	8	0	0	9
Not suspended but investigated ..	2	0	0	0	2
Not suspended or investigated ..	5	12	2	0	19
Protests withdrawn	1	0	0	0	1
Tariff proposals cancelled	3	1	1	0	5
Petitions for reconsideration:					
Granted	0	0	0	0	0
Denied	2	2	0	0	4
Total	14	23	3	0	40

TABLE 3.—Action Taken on Proposals (Protested and Non-Protested) Considered by the Suspension/Special Permission Board, Fiscal Year 1992.—Con.

	Rail	Motor	Water	Pipeline	Total
Special Tariff Authority Applications:					
Granted	4	45	0	1	50
Denied	0	1	0	0	1
Revoked	0	2	0	0	2
Withdrawn	0	1	0	0	1
Special Contract Authority Applications:					
Granted	10	0	0	0	10
Denied	0	0	0	0	0
Total	14	49	0	1	64
Grand total	28	72	3	1	104

Source of Data: Office of Tariffs statistical reports.



TABLE 4.—Informal Rate Cases Branch (Office of Tariffs—Fiscal Year 1992).

Tariff interpretations:		
On hand beginning of year		230
Received during year		7,511
Disposed of during year		7,713
Pending at end of year		28
Informal complaints and statements of claimed damages:		
On hand beginning of year		2
Received during year		0
Disposed of during year		2
Pending at end of year		0
Special docket cases:		
On hand beginning of year		43
Received during year		881
Disposed of during year		859
Pending at end of year		65

Source of Data: Office of Tariffs statistical reports.



TABLE 5.—ICC Unit of the National Defense Executive Reserve (NDER).

NDER Group	Fiscal Year 1990 On Roll	Fiscal Year 1991 On Roll	Fiscal Year 1992 On Roll
Rail	275	240	218
Motor	69	51	42
Water	19	10	8

Source: Office of Compliance and Consumer Assistance.

TABLE 6.—Car Supply—Car Ownership, Installations, Retirements and Transfers, and Orders, Class I Railroads.

	Fiscal Year			
	1977	1982	1987	1992
Ownership:				
Plain Box	262,369	135,424	74,867	36,245
Equipped Box	167,461	151,965	92,788	74,692
Total Box	429,830	287,389	167,655	110,937
Refrigerator	73,531	56,443	41,939	29,353
Gondola	166,886	137,079	97,052	85,878
Hopper	335,349	297,629	206,629	161,288
Covered Hopper	161,238	169,263	145,846	139,393
Flat	98,256	87,743	84,203	73,847
Other	33,558	23,460	15,615	8,305
Total Cars	1,298,648	1,059,006	758,629	609,001
Cars Installed:				
Box	5,623	233	50	0
Refrigerator	809	150	0	0
Gondola	4,757	1,179	123	571
Hopper	9,885	3,848	0	301
Covered Hopper	6,803	1,216	20	523
Flat	2,797	464	606	159
Other	518	59	0	0
Total Cars	31,192	7,020	799	1,554
Cars Retired or Transferred to Owners Other Than Class I Railroads:				
Box	31,240	33,038	18,393	6,063
Refrigerator	2,488	3,260	4,855	1,665
Gondola	10,720	7,211	9,297	1,717
Hopper	22,151	14,145	17,421	13,415
Covered Hopper	2,855	5,136	5,050	3,932
Flat	2,997	4,468	2,160	3,662
Other	1,422	2,621	1,511	988
Total Cars	73,873	69,879	58,687	31,442

TABLE 6.—Car Supply—Car Ownership, Installations, Retirements and Transfers, and Orders, Class I Railroads.—Continued

	Fiscal Year			
	1976	1981	1986	1991
Cars Ordered:				
Box	7,588	140	50	0
Refrigerator	713	150	0	0
Gondola	2,873	691	0	571
Hopper	7,224	2,900	0	300
Covered Hopper	5,419	699	20	1,230
Flat	3,874	358	606	194
Other	500	0	0	20
Total Cars	28,191	4,938	676	2,315

Source: Association of American Railroads.



TABLE 7.—Railroad Revenue Adequacy Status.

Railroad	Return on Investment	Finding
1. Atchison, Topeka and S.F.	6.5%	Inadequate
2. Burlington Northern R. Co.	Negative	
3. Chicago & North Western Transp. Co.	7.1%	Inadequate
4. Consolidated Rail Corp.	Negative	Inadequate
5. CSX Transportation, Inc.	Negative	Inadequate
6. Florida East Coast R. Co.	2.2%	Inadequate
7. Grand Trunk Western R. Co.	Negative	Inadequate
8. Illinois Central R. Co.	15.2%	Adequate
9. Kansas City Southern R. Co.	9.3%	Inadequate
10. Norfolk Southern Corp.	6.0%	Inadequate
(Combined Railroad Subsidiaries)		
11. Soo Line R. Co.	4.0%	Inadequate
12. Southern Pacific R. Co.	Negative	Inadequate
(Combined Railroad Subsidiaries)		
13. Union Pacific R. Co.	1.7%	Inadequate

TABLE 8.—Abandonments, Construction, and New Acquisitions and Operations.

	Fiscal Year 1990		Fiscal Year 1991		Fiscal Year 1992	
	Num- ber	Miles	Num- ber	Miles	Num- ber	Miles
1. Abandonments:¹						
Applications filed	18	505	9	181	18	700
Granted	15	256	12	396	15	701
Denied	1	28	0	² 2	2	1
Dismissed	4	133	0	0	0	0
Dismissed because of sale . . .	1	1	1	10	1	16
Petitions for exemptions filed .	37	907	44	944	43	753
Granted	31	690	42	826	37	657
Denied	1	71	0	0	1	9
Dismissed	2	17	1	14	1	11
Dismissed because of sale . . .	5	65	1	5	1	18
Notices of exemption filed . . .	88	750	69	634	56	398
Granted	88	661	67	671	52	367
Dismissed	3	28	3	13	1	6
Dismissed because of sale . . .	0	0	1	6	³ 2	19
2. Construction:						
Applications filed	1	3	1	40	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Petitions for exemptions filed .	7	10	1	5	7	47
Granted	3	7	4	3	6	50
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of exemptions filed ⁴ .	N/A	N/A	N/A	N/A	9	72
Granted	N/A	N/A	N/A	N/A	9	72
Dismissed	N/A	N/A	N/A	N/A	0	0
3. Acquisitions and Operations						
Under 49 U.S.C. 10901:						
Applications filed	0	0	0	0	0	0
Granted	0	0	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	0	0	0	0	0	0
Notices of exemption filed . . .	50	3,093	50	3,794	53	4,581
Granted	43	3,027	48	3,556	51	4,953
Dismissed	3	26	2	30	2	19

N/A = Not applicable.

¹ Figures for applications filed and application upon which action was taken will not total each other since actions taken on some proceedings are from cases filed in past fiscal years.² Miles resulting from partial denial, case counted as a grant above.³ These cases are also counted as grants above. Only a portion of the lines considered were sold.⁴ Includes only joint relocation projects under 49 U.S.C. 11343.

TABLE 9.—Intercarrier Financial Transactions.¹

	Fiscal Year 1990	Fiscal Year 1991	Fiscal Year 1992
1. Consolidations, Acquisitions Under 49 U.S.C. 11343:			
Applications filed	14	4	5
Granted	15	2	5
Denied	0	0	0
Dismissed	1	0	0
Petitions for exemption filed	12	22	16
Granted	10	26	15
Denied	1	0	0
Dismissed	2	0	1
Notices of Exemption filed	29	27	24
Granted	26	27	23
Dismissed	0	1	1
2. Trackage Rights: ²			
Applications filed	9	0	0
Granted	5	7	0
Denied	0	0	0
Dismissed	1	1	0
Petitions for exemption filed	1	0	1
Granted	1	0	1
Denied	1	0	0
Dismissed	0	0	0
Notices of exemption filed	61	46	54
Granted	55	45	52
Dismissed	1	4	0
3. Leases:			
Applications filed	1	3	0
Granted	2	2	2
Denied	0	0	0
Dismissed	0	0	0
Petitions for exemption filed	3	6	10
Granted	5	3	8
Denied	0	0	0
Dismissed	1	0	1
Notices of Exemption filed	0	0	0
Granted	1	0	0
Dismissed	0	0	0

¹ This table does not report mileages because mileages are not normally required for these transactions.

² Includes formal applications and petitions for exemption for fiscal years 1988 and 1989. For fiscal year 1990, includes only formal applications.

TABLE 10.—Extension of Time Limits Under Section 10327(k)—Rail Proceedings, Fiscal Year 1992.

Proceeding	Type of Proceeding	Notification of Extension	Reason and Duration
No. 40365S, National Starch and Chemical Corporation v. The Atchison, Topeka and Santa Fe Railway Company, et al.	Complaint	December 2, 1991, January 3, and March 13, 1992	31, 91, and 45-day extensions to consider complex legal issues
Ex Parte No. 346 (Sub-No. 14A), Rail General Exemption Authority—Miscellaneous Agricultural Commodities—Petition to Revoke Conrail Exemption	Petition to revoke exemption	November 14, 1991 February 25, and May 13, 1992	90, 90, and 30-day extensions to consider complex legal issues
No. 40664, Ametek, Inc. v. Panther Valley Railroad Corporation et al.	Complainant	September 11, 1992	75-day extension to consider complex legal issues



TABLE 11.—Status of State Regulation of Intrastate Rail Rates.

CERTIFIED STATES

Ex Parte No. 388 Sub-No.	State	Date certification expires
1	Alabama	June 21, 1995
2	Arkansas	December 14, 1994
3	Colorado	July 24, 1996
5	Georgia	May 23, 1995
7	Illinois	September 20, 1994
9	Iowa	January 12, 1996
10	Kansas	September 26, 1995
11	Kentucky	April 5, 1996
13	Maryland	February 7, 1996
14	Michigan	February 10, 1996
15	Minnesota	April 6, 1996
16	Mississippi	February 22, 1995
18	Montana	October 25, 1995
22	New Mexico	March 16, 1992

TABLE 11.—Status of State Regulation of Intrastate Rail Rates.—Continued

CERTIFIED STATES

Ex Parte No. 388 Sub-No.	State	Date certification expires
23	New York	December 22, 1995
24	North Dakota	February 2, 1996
26	Oklahoma	August 30, 1995
27	Oregon	January 21, 1992
29	South Carolina	September 26, 1995
33	Virginia	October 19, 1994
35	West Virginia	December 13, 1995
36	Wisconsin	September 23, 1995

STATES REGULATED DIRECTLY BY THE INTERSTATE COMMERCE COMMISSION

Ex Parte No. 388 Sub-No.	State	Effective Date
N/A	California	May 11, 1982
N/A	Connecticut	May 11, 1982
N/A	Delaware	May 11, 1982
4	Florida	October 1, 1985
6	Idaho	October 23, 1984
8	Indiana	June 22, 1987
12	Louisiana	May 2, 1986
17	Missouri	September 14, 1992
19	Nebraska	January 6, 1986
N/A	Nevada	May 11, 1982
20	New Hampshire	February 26, 1990
21	New Jersey	October 4, 1983
N/A	North Carolina	May 11, 1982
25	Ohio	October 29, 1984
28	Pennsylvania	June 14, 1983
30	Tennessee	March 17, 1990
31	Texas	May 20, 1984
32	Utah	March 7, 1986
34	Washington	June 14, 1991
37	Wyoming	February 22, 1983
38	Alaska	July 3, 1985

N/A = Not applicable.

TABLE 11.—Status of State Regulation of Intrastate Rail Rates.—Continued

UNREGULATED STATES

State	Effective Date
Arizona	May 11, 1982
Hawaii	May 11, 1982
Maine	May 11, 1982
Massachusetts	May 11, 1982
Rhode Island	May 11, 1982
South Dakota	May 11, 1982
Vermont	May 11, 1982
District of Columbia	May 11, 1982

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. The Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. To place orders or for price information, contact:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
Telephone (202) 783-3238

Publications without an asterisk may be obtained free of charge (while supplies last) by writing to the ICC office listed after the title. For reference, they are:

- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, DC 20423
- Office of Economics (OE)
Interstate Commerce Commission
Washington, DC 20423
- Office of External Affairs (OEA)
Interstate Commerce Commission
Washington, DC 20423
- Office of the Secretary (SE)
Interstate Commerce Commission
Washington, DC 20423
- Office of Public Assistance (OPA)
Interstate Commerce Commission
Washington, DC 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Office of Economics' Public Reference Room (Room 3378) from 8:30 a.m. to 5:00 p.m. Photocopies of these reports, at a cost of 60 cents per page, with a \$5.00 minimum charge per order, may be obtained by writing to the Office of the Secretary, Room 2229, ICC, Washington, DC 20423. Telephone (202) 927-5693.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to one year from the date of service from Dynamic Concepts, Inc. (DCI), Room 2229, ICC, Washington, DC 20423, or by calling (202) 289-9357 or (202) 289-4359. Printed reports in the "ICC 2nd Series" are available through DCI.

CONSUMER PUBLICATIONS

OCP-100 When You Move: Your Rights and Responsibilities—OCCA

This booklet explains consumer rights when moving household goods across the state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress—OEA

Years available:

- 98th Report (1984)
- 99th Report (1985)
- 102nd Report (1988)
- 103rd Report (1989)
- 104th Report (1990)
- 105th Report (1991)
- 106th Report (1992)

*Code of Federal Regulations, Title 49, Revised to October 1991**

Parts 1000-1199: General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures.

Parts 1200-End: Uniform system of accounts, preservation of records, reports, valuation, handling of national security information and classified material, passenger and freight tariffs and schedules, and credit regulations.

Interstate Commerce Act

Available from West Publishing Company, Post Office Box 64833, St. Paul, MN 55164, in Title 49 U.S. Code, Sec. 10101 et seq.

ICC Register

A daily summary of Commission decision, notices and motor carrier applications. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Abandonments and Alternatives to Abandonments: Overview—OPA (April 1991)

Before You Start a Small Railroad: A Brief Overview of Things to Consider—OPA (September 1988)

Environment: Guide to the Interstate Commerce Commission's Environmental Rules—OE (December 1991)

Federal and State Regulations Concerning Interstate Motor Operations: Overview—OPA (June 1992)

Illegal Lumping—OPA

Lease-Purchase Plans—OPA

Listing of Minority and Female Motor Carriers—OPA (April 1992)

The Motor Carrier Industry Long After Deregulation—OE (March 1992)

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982—OPA

Public Participation in Rail Abandonment Cases Under the Interstate Commerce Act—OPA (August 1990)

Small Carrier Transfer and Name Change Procedures—OPA (December 1988)

So You Want to Start a Small Railroad—ICC Small Railroad Application Procedures—OPA (September 1992)

Staff Report No. 12—Highlights of Activity in the Property Motor Carrier Industry—OE (January 1990)

"Transportation: Trucking Services" as appearing in U.S.C. Industrial Outlook—OE (1992)

Inspector General Reports

Photocopies of Audit Reports and semiannual reports are available at a cost of 60 cents per page, with a \$5.00 minimum charge per order, from the Office of the Secretary, Room 2229, ICC, Washington, DC 20423. Telephone: (202) 927-5693.

Speeches and Statements—OEA

ICC Commissioner's speeches or statements before Congressional committees may be obtained on an individual basis, when available, from the Office of External Affairs, Room 4136, ICC, Washington, DC 20423. Telephone (202) 927-5340.

SPECIALIZED PUBLICATIONS

Motor

Transport Statistics in the U.S. Motor Carriers—OE

(First Release, Part 2, 1991)

(Second Release, Part 2, 1991)

The Commission's Office of Economics publishes quarterly reports on selected earnings data—OE

- *Large Class I Motor Carriers of Property*
- *Large Class I Motor Carriers of Passengers*
- *Large Class I Household Carriers*

Rail

Class I Line-Haul Railroads, Selected Earnings Data—OE (Quarterly)

Rail Rates Experience Multi-Year Decline—OE (May 1992)

A Survey of Shipper Satisfaction with Service and Rates of Shortline and Regional Railroads—Joint Staff Study—OE (August 1989)

Report of Railroad Employment Class I Line-Haul Railroads—OE

Coal Transportation and the Staggers Rail Act of 1980—OE (October 1990)

Transport Statistics in the U.S., Railroad Companies—OE (1991)

Wage Statistics of Class I Railroads in the U.S.—OE

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Programs User's Manual—Description of the independent interactive computer program for estimating cost of specific, individual rail movements.—OE (May 1990)

URCS—Uniform Railroad Costing System, Phase II, Movement Costing Program Technical Manual—Description of Fortran costing programs compatible to Digital Equipment Corporation and IBM equipment—OE (December 1989)

CADLAS—Computer Assisted Depreciation and Life Analysis System—A personal computer-based system to

estimate average service lives and salvage values of locomotives, rolling stock, roadway property, and track accounts. Also calculates annual depreciation expenses and theoretical depreciation reserves. A copy can be obtained for \$195 by contacting Chief, Section of Financial Analysis, Room 3146, ICC, Washington, DC 20423. Telephone (202) 927-5740.

URCS—1991 Uniform Railroad Costing System Unit Costs—A personal computer-based system to estimate the average variable and total cost of providing railroad service. A copy of the unit costs and movement costing program can be obtained for \$20 by contacting Chief, Section of Rail Costing, Room 3315, ICC, Washington, DC 20423. Telephone (202) 927-5740.

APPENDIX D

Appropriations and Employment

The following statement shows average full-time employment and total appropriations for the fiscal years 1958 to 1992 for activities included under the current appropriation title "Salaries and Expenses".

Fiscal Year	Appropriation	Average Employment	Fiscal Year	Appropriation	Average Employment
1958...	17,412,375	2,238	1976...	52,455,000	2,034
1959...	18,747,800	2,268	TQ	12,290,000	2,113
1960...	19,650,000	2,344	1977...	60,786,000	2,084
1961...	21,451,500	2,386	1978...	65,575,000	2,040
1962...	22,075,000	2,400	1979...	70,400,000	2,040
1963...	23,502,800	2,413	1980...	79,063,000	1,946
1964...	24,670,000	2,408	1981...	82,400,000	1,852
1965...	26,715,000	2,339	1982...	70,150,000	1,540
1966...	27,540,000	2,376	1983...	65,600,000	1,319
1967...	27,169,000	1,929	1984...	60,000,000	1,158
1968...	23,846,000	1,899	1985...	51,100,000	915
1969...	24,664,000	1,808	1986...	48,408,000	806
1970...	27,742,660	1,802	1987...	46,802,000	732
1971...	28,442,000	1,731	1988...	44,294,000	712
1972...	30,640,000	1,676	1989...	43,115,000	699
1973...	33,720,000	1,765	1990...	44,205,000	665
1974...	40,681,000	1,874	1991...	43,777,000	630
1975...	44,970,000	1,986	1992...	40,923,000*	613

Source: Appropriation data; Annual Appropriation Acts. Average Employment; Commission's report to OPM. SF 113-G.

*Beginning in FY 1992, the Commission's Budget request has been statutorily offset by the collection of user fees. For FY 1992, that amount was \$5,500,000.

Status of Appropriations

Status of fiscal year 1992 appropriations as of September 30, 1992.

Salaries and expenses:	
Total appropriations	\$40,923,000
Reimbursements	5,904,016
Balanced Budget and	
Emergency Deficit	
Control Act of 1985	
Reduction	—0—
Total obligations	46,785,013
Unobligated balance available	
for adjustments	42,003
Directed Rail Service:	
Unobligated balance	
available from prior	
appropriation	—0—
Total obligations—Payments	
to carriers	—0—
Recoveries of prior years	
obligations	—0—
Unobligated balance	
available (end of year)	—0—

Receipts

Status of receipt accounts as of September 30, 1992.

Registration and filing fees	\$6,237,933
Fines, penalties, and forfeitures ..	230,361
Service charges for allotments or	
pay for savings account	—0—
Charges for administrative	
services	61,447
Miscellaneous recoveries and	
refunds	21,431
Withholding for military benefits ..	—0—
Interest and penalties for late	
payments	—0—
Total Receipts	\$6,551,172

Source: Commission Accounting System.

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1.—Carriers regulated by the Commission.

	Number
Carriers subject to Uniform System of Accounts and/or required to file annual & periodic reports as of October 1, 1991:	
Railroads, class I	13
Motor Carriers, class I passengers	30
Motor Carriers, class I property	849
Motor Carriers, class II property	1,111
Total	2,003
Carriers and organizations not required to file reports as of October 1, 1992:	
Railroads, class I	1
Railroads, class II line-haul	27
Railroads, class III line-haul	330
Railroads, other	197
Carlines (companies that furnish cars used on rail lines)	166
Holding companies—rail	3
Holding companies—motor	76
Motor carriers of passengers, other than class I	4,573
Class I and II motor carriers of property relieved from reporting	255
Class III motor carriers of property	48,316
Water carriers	360
Freight forwarders	674
Rate bureaus and organizations	71
Coal slurry pipeline company	1
Protective services companies	6
Total	55,056
Grand total	57,059

NOTE: Railroad companies, motor carriers of passengers, and motor carriers of property are classified based on gross annual operating revenues at specified levels for three consecutive years. The revenues are adjusted by a deflator factor to eliminate the effects of inflation. The inflation factor for railroad companies is based on the annual average Railroad Freight Price Index, but because the revenue thresholds were increased this year to the levels shown below, the rail deflator factor is 1.0 for 1991. The inflation factor for motor carriers of property is based on the annual average Producers Price Index for all commodities. The inflation factor for motor carriers of passengers is based on the Producer Price Index of finished goods. The following table contains the unadjusted revenue levels for each transportation mode and the respective 1991 deflator factor for each mode used to classify carriers for accounting and reporting purposes:

CARRIER	DEFLATOR	CLASSIFICATION THRESHOLD
Railroads	1.0	Class I—\$250 million or more Class II—Between \$20 million and \$250 million Class III—\$20 million or less
Motor carriers of property	.7708	Class I—\$5 million or more Class II—Between \$1 million and \$5 million Class III—Less than \$1 million
Motor carriers of passengers	.9176	Class I—\$5 million or more Class II—Less than \$5 million

TABLE 2.—Class I line-haul railroads shareholders' equity, long-term debt and dividends (dollars in thousands).

Item	1989	1990	1991
1. Shareholders' equity:			
a. Capital stock.	\$2,716,399	\$2,734,154	\$2,712,876
b. Capital surplus	6,144,234	5,515,191	5,682,155
c. Retained income.	16,892,165	15,413,231	14,207,904
d. Total equity.	25,752,798	23,662,576	22,602,935
2. Long-term debt.	9,256,144	9,479,213	9,201,309
3. Total equity and debt.	35,008,942	33,141,789	31,804,244
4. Ratio of debt to total equity and debt (%)	26.44	28.60	28.93
5. Amount of dividends.	\$1,911,040	\$2,076,531	\$915,615

TABLE 3.—Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands).

Item	1989	1990	1991
1. Number of carriers represented .	15	15	14
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight	\$27,058,765	\$27,470,520	\$26,949,280
b. Passenger	90,697	93,861	93,985
c. Total operating revenues . .	27,955,959	28,369,803	27,845,206
3. Total operating expenses	25,037,666	24,651,542	28,061,187
4. Net railway operating income . .	1,895,262	2,648,258	— 37,455
5. Ordinary income	2,009,094	1,961,127	— 90,849
6. Extraordinary items—net ¹	193,714	16,284	— 190,485
7. Net income	2,202,808	1,977,411	— 281,334
NET INVESTMENT AND EQUITY			
8. Net investment in transportation property and equipment plus working capital ²	36,850,743	37,203,643	38,091,758
9. Shareholders' equity	25,752,798	23,662,576	22,602,935
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (L3/L2c)	89.56	86.89	100.78
11. Return on net inv. (L4/L8)	5.14	7.12	—
12. Return on equity:			
a. Ordinary income basis (L5/L9)	7.80	8.29	—
b. Net income basis (L7/L9) . .	8.55	8.36	—
EMPLOYEE DATA			
13. Average number	227,548	216,424	206,386
14. Compensation:			
a. Total	\$9,043,221	\$8,654,186	\$8,695,146
b. Per hour paid for	15.762	15.827	16.819

¹ Includes discontinued operations, cumulative effect of accounting changes, and income taxes on extraordinary items.

² Accumulated deferred income tax reserves have been subtracted from the net investment base in accordance with the modification approved by the Commission in Ex Parte No. 393 (Sub-No. 1), Standards for Railroad Revenue Adequacy, served December 31, 1986.

NOTE: Net railway operating income, ordinary income and net income for the year 1991 were substantially reduced due to large accounting adjustments by some railroads to record major restructuring efforts to eliminate excess capacity and increase labor productivity.

TABLE 4.—Class I line-haul railroads current assets and current liabilities as of December 31, 1990 and 1991 (dollars in thousands).

Item	1990 amount	Percent ¹ of change	1991 amount	Percent ² of change
1. Cash and temporary cash investments	\$929,873	-12.5	\$641,920	-31.0
2. Materials and supplies	902,723	0.4	830,674	-8.0
3. Total current assets	5,699,421	-15.4	5,506,576	-3.4
4. Total current liabilities	9,204,399	4.0	9,495,548	3.2
5. Net working capital:				
a. Including materials & supplies	(3,504,978)	—	(3,988,972)	—
b. Excluding materials & supplies	(4,407,701)	—	(4,819,646)	—
RATIOS				
6. Current assets to current liabilities:				
a. Including materials & supplies	0.62		0.58	
b. Excluding materials & supplies	0.52		0.49	
7. Cash and temporary cash investments to current liabilities	0.10		0.07	

¹ Represents percent change from prior year 1989.² Represents percent change from prior year 1990.

Table 5.—Class I motor carriers of property condensed income statement, financial ratios and employee data (dollars in thousands).

Item	1989	1990	1991
1. Number of carriers represented ¹ . .	681	728	677
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Freight-intercity-common carrier	\$34,827,532	\$36,974,285	\$38,167,558
b. Freight-intercity-contract carrier	4,662,542	5,211,767	5,670,914
c. Freight-local cartage	544,324	791,732	569,198
d. Intercity transportation for other motor carriers	179,553	185,612	155,305
e. Other operating revenue	393,430	529,328	409,707
f. Private carriage & CIH revenues ²	508	N/A	94,861
g. Household goods revenues . .	2,845,968	3,026,208	2,729,857
h. Total operating revenues . . .	43,453,857	46,709,932	47,797,400
3. Operating expenses	41,847,628	44,827,137	45,974,588
4. Net carrier operating income	1,606,229	1,882,795	1,822,812
5. Other income and miscellaneous deductions from income—net . .	(375,934)	(408,530)	(402,186)
6. Income taxes on ordinary income ³ .	447,190	486,762	536,093
7. Ordinary income	783,105	987,503	884,533
8. Extraordinary items—net ⁴	42,801	9,303	4,972
9. Net income	825,906	996,806	889,505
NET INVESTMENT AND EQUITY			
10. Net investment in carrier operating property and equipment plus working capital	12,063,523	12,392,086	13,507,919
11. Shareholders' and proprietors' equity	9,476,920	9,850,799	10,219,066
FINANCIAL RATIOS (PERCENT)			
12. Operating ratio (L3/L2h)	96.30%	95.97%	96.19%
13. Return on net investment (L4/L11)	13.31%	15.19%	13.49%
14. Return on equity (L9/L12)	8.72%	10.12%	8.70%
EMPLOYEE DATA			
15. Average number (whole number) . .	602,903	607,098	610,323
16. Compensation	\$16,563,138	\$17,735,343	\$18,232,583

N/A = Not applicable.

¹ Carriers for which data was complete and available at publication. Data has not been audited by the Commission.² Comparative data not available due to changes in report form.³ Does not include income taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.⁴ Includes income taxes on extraordinary items, discontinued operations and accounting changes.

TABLE 6.—Class I intercity motor carriers of passengers condensed income statement, and financial ratios (dollars in thousands).

Item	1989	1990	1991
1. Number of carriers represented ¹	21	21	21
CONDENSED INCOME STATEMENT			
2. Operating revenues:			
a. Passenger intercity schedules	\$892,508	\$738,487	\$791,524
b. Local and suburban schedules	5,237	4,143	3,875
c. Charter or special service . .	170,635	90,200	76,206
d. Other operating revenues . .	144,757	110,438	108,455
e. Total operating revenues . .	1,213,137	943,268	980,060
3. Operating expenses.	1,141,538	1,026,213	967,018
4. Net carrier operating income . .	71,599	(82,945)	13,042
5. Income tax on ordinary income ²	2,713	1,317	2,693
6. Other income/deductions.	(61,729)	(41,027)	(25,049)
7. Extraordinary items—net ³	(67)	(55,053)	176,386
8. Net income	7,090	(180,342)	161,686
EQUITY			
9. Shareholders' equity	118,058	7,411	160,558
FINANCIAL RATIOS (PERCENT)			
10. Operating ratio (Line 3/Line 2e) . .	94.10	108.79	98.67
11. Return on equity (Line 8/Line 9) . .	6.01	—	100.01

NOTE: The large declines in revenues, earnings and certain other data in 1990 compared to 1989 are attributable to the adverse effects of a strike at Greyhound Lines, Inc., which began on March 2, 1990. The large increase in extraordinary items is attributable to reorganization costs incurred by Greyhound in connection with its filing for bankruptcy on June 4, 1990, pursuant to Chapter XI of the Federal Bankruptcy Code.

The large amount shown for extraordinary income in 1991 is attributable to accounting adjustments by Greyhound to record the extinguishment of certain pre-bankruptcy debt, in accordance with the carrier's emergence from bankruptcy, effective October 31, 1991. Net income and shareholders' equity increased substantially in 1991 compared to 1990 as a result primarily of this write-off of debt and an improvement in Greyhound's operating results.

¹ Carriers for which financial and statistical data were available. Data was not audited by Commission.

² Does not include taxes applicable to sole proprietorships, partnerships and corporations that have elected to be taxed under Sec. 1372(a) of the Internal Revenue Code. Also does not include taxes on extraordinary items. Includes provisions for deferred taxes.

³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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